The Central Law Journal.

ST. LOUIS, APRIL 22, 1887.

CURRENT EVENTS.

OUR DIGEST OF RECENT CASES.—We beg to call the attention or our readers to the Digest of Recent Cases in this number of the JOURNAL, which contains abstracts of not less than two hundred and fifty cases. In this matter we are making at considerable extra labor and expense, a new departure. We are now publishing in each number of the JOURNAL, short abstracts of *all* the current decisions of all courts of the last resort, State and Territorial, and also of the Supreme, Circuit and District Courts of the United States. In each of these abstracts there is a succinct statement of the title of the case, the leading points, when and where decided, and where, for the small sum of twenty-five cents any reader may obtain a full report of the opinion of the court.

This digest we are sure will enable our subscribers to keep at all times fully abreast with all the current legal decisions of all the courts within the United States. We flatter ourselves that our efforts in this direction, to render the JOURNAL still more worthy of the support of our friends, will be duly appreciated, especially as we will not in the slightest degree omit or curtail the other well-known and highly appreciated features of th JOURNAL, Current Events, Notes of Recent Decisions, Leading Articles by authors of ability and reputation, and Leading Cases exhaustively annotated. To these hereafter, as heretofore, we will give our most sedulous attention.

PERPETUITIES.—That "history repeats itself," is probably more absolutely true in legal than in political, national or other secular affairs. About one hundred years ago Mr. Peter Thellusson, in the language of the *London Law Times*, "built himself an everlasting name in our law when he made his will and tied up his six hundred thousand pounds so carefully that even the House of Lords could not untie it, and had not the law conveniently eaten up the estate in costs, it would have accumulated during the lives of all the testator's children, grandchildren, and great-grandchildren who were living at the time of his death, until it reached the desired number of millions. So, in 1800, the Thellusson act was passed, forbidding any accumulation of income for any longer term than the life of the settlor, or twenty-one years from his decease, or during the minority of any person living at his decease, or during the minorities of persons beneficially entitled."

This Thellusson act was reproduced in New York in 1829, and at a later date the New York statute was adopted in Michigan, and was probably improved by both transcriptions. Now, it seems that a trial court in Michigan has been wrestling with the latest of these versions, in the matter of the will of Mr. Palms, a gentleman of large fortune, which in respect of accumulations and attempted perpetuity is very similar to that of Mr. Thellusson. The Michigan court, however, has been more adroit in the construction of the Palms will than the House of Lords was in the case of the Thellusson will; it did "untie" the elaborate settlement, and declare the provisions for prolonged accumulation utterly void. The opinion of Judge Jennison, which we have had the pleasure of perusing in a newspaper, is able, elaborate and learned, and worthy of the importance of the principles of public policy involved in it. The end, however, is not yet, as the case will go for final adjudication to the Supreme Court of Michigan, and we will look with much interest for its final decision. Meantime, we may say that our faith in the moderation of American lawyers is so great that, in our opinion, no apprehension should be entertained that the Palms estate will meet the same fate which, according to the *Law Times* befell the Thellusson estate—"conveniently eaten up in costs."

It is a noteworthy coincidence that, while American courts are construing our statutes against perpetuities and undue accumulations, our versions of the Thellusson act, English lawyers of eminence are agitating for amendments of the original statute, still further restricting the powers of testators. The *London Law Times* says further on this subject: "Thus the law has remai[illegible] the

best part of a century. Now, however, such good lawyers as Mr. Cozens-Hardy, Q. C., Professor Bryce, and Mr. Haldane wish to curtail still further the 'posthumous vanity' of settlors and testators, and would have it enacted that no person shall 'settle or dispose of any property in such manner that the rents, issues, profits, or income thereof shall be wholly or partially accumulated for any longer term than during the minority or respective minorities only of any person or persons who, under the uses or trusts of the instrument directing such accumulations would, for the time being, if of full age, be entitled to receive the rents, issues, profits, or income so directed to be accumulated.' Any direction contravening this rule will be void, and the money will go to the person who would have been entitled thereto if the faulty direction had not been given. Few of those who know how anxious settlors and testators show themselves to tie up their property to the last possible moment, thereby perhaps crippling their nearest relatives, and certainly imposing a long anxiety upon their trustees and executors, will think Mr. Cozens-Hardy's bill unnecessary."

Speaking unprofessionally, and perhaps we might add anti-professionally, we are of opinion that usually the law makes the best will. The exceptions are numerous certainly, but they do not include elaborate plans and complicated arrangments reaching far into the future which no man can either know or control. A man can hardly vex his soul more unprofitably than in the concoction of schemes to be executed after his death, and which, however kindly intended, will probably prove a source of anxiety, trouble and loss to those whom he has loved and left behind him.

NOTES OF RECENT DECISIONS.

NEGLIGENCE — PROXIMATE CAUSE — RAILROAD EMPLOYEES.—The Supreme Court of Iowa has recently decided a case [1] on the well-worn subject of negligence and proximate cause, which, although no new doctrine is promulgated, affords us reasonable ground for a few remarks. The case was that of a laborer on a construction train, against the railroad company. The plaintiff was at work at a gravel or sand pit in front of the train, which was used to carry sand and gravel from that place to other points on the road, to be used in "ballasting" the track. The train started without signal, and plaintiff jumped from the track to a space between it and a perpendicular bank of sand about eight feet high. After the locomotive and a portion of the train had passed, part of the bank caved off, fell upon the plaintiff and forced him under the wheels of the car, by which he was injured. The court held that, under the Iowa statute,[2] he was one of that class of employees who were entitled to hold the employer liable for injuries caused by the negligence of a fellow servant. The court held further, however, that as the caving off of the sand bank, forcing plaintiff on the track, was the immediate or proximate cause of the injury, that it could not be attributed to the negligence of the engineer in omitting to give the signal before moving the train.

It seems to us that in this ruling, as in many other cases in which the alleged contributory negligence of the party injured, has saved the party primarily negligent, the plaintiff has had hard measure. Courts are entirely too prone to hold persons suddenly exposed to deadly peril, bound to exercise the utmost presence of mind, and the very clearest judicial discretion, and to expect of a frightened wretch in imminent danger of death or great bodily harm the intuitive exercise of that lucid wisdom which can only come to others from deliberate and continuous *ex post facto* reasoning. In this case it is very probable that the plaintiff might have safely jumped to the other side of the track and escaped without injury, but if so, should he lose his remedy, because in a moment of sudden and extreme peril, brought upon him by the culpable negligence of the defendant, he had not all his wits about him? It would seem that, when a man has done the best he could, under the circumstances, to escape from danger produced by the negligence of another, and if it nevertheless overtakes him, he should not lose his remedy because his "best" was not identical with the ideal plans of the expert and the philosopher. We think, too, that it is a gross misapplication of the

[1] Handelun v. Burlington, etc. Co., March 4, 1887; 32 N. W. Rep. 4.

[2] Code Iowa, § 1307.

term "proximate cause" to say that a force which pushes a man's leg under a moving car wheel is the proximate cause of the injury inflicted by that car wheel. We should suppose that the proximate cause of injury by cutting off a man's leg is the instrument by which the amputation is effected and the power by which that instrument is controlled, and if that instrument is unlawfully set in motion, and the amputation is *invito domino*, there is at once a *prima facie* case in his favor. The injury suffered is the plaintiff's cause of action, and that which immediately inflicts that injury is the proximate cause.

The truth is, the whole body of negligence law, as it is now administered in the courts, bristles with incongruities, contradictions and irregularities,. A very large proportion of it is purely judicial legislation enacted by the courts *pro re nata*, and of very modern origin, as within living memory it has grown from very modest dimensions to its present enormous bulk. Fifty years ago the principles of law governing the subject were very few in number and very general in their nature; within that period this branch of the law with very few statutory provisions has been expanded by the courts into an immense mass of *dicta*, incongruous, ambiguous and contradictory, replete with explanations which confuse, and distinctions which perplex. If there is one topic of the law which, more than any other, needs the free application of the scalpel, the moulds and the hydraulic press (if we may so far mix metaphors) of codification, it is the law of negligence and contributory negligence.

MISTAKE IN SALES OF GOODS.

The subject of mistake in sales of personal property, which is generally treated in connection with the mutual assent of the parties to the transfer and the failure of consideration therefor, is more aptly considered as a separate topic. So viewed, it presents many interesting and important points of controversy, which the writer, within the limits of the present article, has been able merely to indicate and not to fully elaborate. A succinct statement of the principles governing the subject and their various applications has, however, been attempted, and this, it is thought, cannot fail to be of service to the practicing attorney seeking the latest and completest results of the action of the courts.

Concerning Terms of Contract.—Where the minds of the parties to a contract do not meet upon the whole and exact terms of such contract, the same is void.[1] Hence, where there is a mutual mistake as to the price of an article, there is no sale, and neither party is bound.[2] And to an action for not accepting cotton "to arrive ex Peerless from Bombay," it is a good defense that the buyer meant a ship called the "Peerless" which sailed from Bombay in October, and that the seller was not ready to deliver any cotton which arrived by that ship, but only cotton which arrived by another ship called the "Peerless," which sailed from Bombay in December.[3] So, whatever is done between the parties, under a supposed agreement of sale, where there is a mutual misunderstanding as to its terms, is not binding;[4] and though both parties consent at the time to the delivery of a portion of the property agreed to be sold, each supposing that such delivery is to be a part performance of the conditional contract of sale, the law will not imply that either of the parties intended that the property was to be absolutely the purchaser's, in case he failed to comply with the whole agreement.[5] But a mistake of one party cannot be set up by him as a ground for rescinding a sale or other contract, or for resisting its enforcement,[6] when his manifested intention misleads the other party,[7] except where advantage is taken of an obvious blunder.[8]

Touching Essence of Contract.—If a pur-

[1] Fullerton v. Dalton, 58 Barb. 236, 239. And see Ketchum v. Catlin, 21 Vt. 191, 194; Greene v. Bateman, 2 Wood & M. 359, 361; Cutts v. Guild, 57 N. Y. 229, 234.

[2] Rupley v. Daggett, 74 Ill. 351, 353. And see Harran v. Foley, 62 Wis. 584, 588; Rovegno v. Defferari, 40 Cal. 459, 462.

[3] Raffles v. Wichelhaus, 2 Hurl. & C. 906.

[4] Fullerton v. Dalton, 58 Barb. 237, 239.

[5] Fullerton v. Dalton, *supra*.

[6] See Harran v. Foley, 52 Wis. 584, 586.

[7] See Philip v. Gallant, 62 N. Y. 256, 263; Zuchtman v. Roberts, 109 Mass. 53, 55; Thomas v. Brown, L. R. 7 Q. B. D. 714, 722. Relief in equity against mistakes of law: 21 Cent. L. J. 4, 280.

[8] Harran v. Foley, 62 Wis. 584, 586. And see Stoddard v. Ham, 129 Mass. 383, 385; Webster v. Cecil, 30 Beav. 62; Tamplin v. James, L. R. 15 Ch. D. 221.

chaser buys on the faith of a false representation by the seller, touching the essence of the contract, the sale will be set aside in equity,[9] whether the misrepresentation was the result of fraud or of mistake.[10] But an innocent misrepresentation or misapprehension does not authorize a rescission of the contract, unless it is such as to show that there is a complete difference in substance between the thing supposed to be taken and that actually taken, so as to constitute a failure of consideration.[11] And though a mutual mistake of the parties as to the subject-matter of the contract, or the price or terms, may be interposed as a defense, it is otherwise where the mistake is in relation to a fact wholly collateral and not affecting the essence of the contract itself.[12]

As to Subject-Matter.—A contract which is made while the parties are under a mutual mistake as to material facts, affecting its subject-matter, is invalid,[13] and may be avoided in a court of law, as well as in equity.[14] Thus, where in a negotiation for the sale of property, the seller has reference to one article and the buyer to another,[15] or where the parties supposed the property to be in existence when in fact it had been destoyed,[16] the contract is ineffectual, because the parties did not in fact agree as to the subject-matter, or because it had no existence.[17] And when it is discovered that the parties, in making a contract of sale, had proceeded upon a mutual mistake as to the situation of the property, the contract is invalid, the parties may be remitted to their original rights, and any portion of the price paid may be recovered back by the purchaser.[18] But where the mistake does not concern the article sold, or the identity of the person purchasing, but the ability of the purchaser to pay for the goods, such mistake will not invalidate the contract of sale and furnish ground for relief in equity.[19] And a mere mistake as to the quality of specified goods will not invalidate the contract of sale.[20] If, however, there is a mistake as to the identity of the article sold, and not merely as to its quality, as where the seller and buyer have reference to different articles, the contract which the parties intended to make fails of effect, and the title does not pass, because the parties did not in fact agree as to the subject-matter.[21] So it is an elementary principle that, where there is a mutual mistake as to the price of an article, there is no sale, and neither party is bound,[22] since there has been no meeting of the minds of the contracting parties.[23] And, in sales of goods, a mutual mistake on such a material point as the quantity of goods sold, will entitle the buyer to recover back any excess of price which he may have paid under the misapprehension.[24] But the buyer cannot avoid a contract of sale for mistake of fact on his part as to the quality of the thing sold;[25] and the seller cannot repudiate the sale for a mutual mistake or misapprehension as to the

[9] Daggett v. Emerson, 3 Story 700, 733.

[10] Daggett v. Emerson, *supra*. And see Torrance v. Bolton, L. R. 8 Ch. App. 118, 123; Juzan v. Toulmin, 9 Ala. 662; s. c., 44 Am. Dec. 449, 453; Miles v. Stevens, 3 Pa. St. 21, s. c., 45 Am. Dec. 621, 624.

[11] Kennedy v. Panama Mail Co., Law R. 2 Q. B. 580, 587.

[12] Wheat v. Cross, 31 Md. 99, 104; s. c., 1 Am. Rep. 28, 30.

[13] Ketchum v. Catlin, 21 Vt. 191, 194.

[14] Ketchum v. Catlin, *supra*. And see Flight v. Booth, 1 Bing. N. C. 370; Mowatt v. Wright, 1 Wend. 355, 362; s. c., 19 Am. Dec. 508.

[15] See Harvey v. Harris, 112 Mass. 32, 37.

[16] See Thompson v. Gould, 20 Pick. 134, 139.

[17] Gardner v. Lane, 9 Allen 492, 499. And see Rice v. Dwight Mfg. Co., 2 Cush. 80, 86; Ketchum v. Bank of Commerce, 19 N. Y. 499, 502; Allen v. Hammond, 11 Peters, 63, 71, 72.

[18] Ketchum v. Catlin, 21 Vt. 191, 195. And see Mowatt v. Wright, 1 Wend. 355; s. c., 19 Am. Dec. 508.

[19] Lupin v. Marie, 6 Wend. 77; s. c., 21 Am. Dec. 256, 258.

[20] Wheat v. Cross, 31 Md. 99, 104; s. c., 1 Am. Rep. 28, 30; Gardner v. Lane, 9 Allen, 492, 500.

[21] Harvey v. Harris, 112 Mass. 32, 37. And see Gardner v. Lane, 9 Allen, 492, 499; Rice v. Dwight Mfg. Co., 2 Cush. 80, 86; Chapman v. Cole, 12 Gray, 141, 142; Sheldon v. Capron, 3 R. I. 171; Thornton v. Kempster, 5 Taunt. 786, 788; Fullerton v. Dalton, 58 Barb. 236.

[22] See authorities cited in next note.

[23] Rupley v. Daggett, 74 Ill. 351, 353. And see Rovegno v. Defferari, 40 Cal. 459, 462; Greene v. Bateman, 2 Wood & M. 359, 361; Calkins v. Griswold, 11 Hun, 208, 212, 213; Harran v. Foley, 62 Wis. 584; s. c., 22 N. W. Rep. 837; Phillips v. Bistolli, 2 Barn. & C. 511. Compare Star Glass Co. v. Langley, 64 Ga. 576, 578; Fear v. Jones, 6 Iowa, 169, 170.

[24] Scott v. Warner, 2 Lans. 49. And see Wheadon v. Olds, 20 Wend. 174; Cox v. Prentice, 3 Maule & S. 344; Calkins v. Griswold, 11 Hun, 208, 211, 213; Armstrong Furniture Co. v. Kosure, 66 Ind. 545, 546. But compare Newlan v. Dunham, 60 Ill. 233, 235. Excessive delivery: Bours v. Watson, 1 Mill. Const. 393; Smith v. Mayo, 1 Allen, 160. And see Goodwin v. Wells, 49 Ala. 309.

[25] See Wheat v. Cross, 31 Md. 99, 104; s. c., 1 Am. Rep. 28, 30. But compare Gardner v. Lane, 9 Allen, 492, 499.

quality of particular articles, whose kind or description has been ascertained.[26]

Concerning Identity of Person.—A mistake in regard to the person dealt with, as where the successor in business fills an order given to his predecessor,[27] is so material as to render the sale invalid for want of privity of contract between the parties, when the personality of the party with whom the negotiation is conducted[28] is an important factor of the transaction.[29] But it seems to be suggested that the complaining partly must have been prejudiced by exclusion from a set-off.[30] And a buyer who is informed of a change in the conduct of the business, but makes no objection and retains the goods, cannot resist an action for the price.[31] So the mere undisclosed fact that the seller supposed that the buyer was the agent of another in the purchase, and would not have sold on such buyer's own credit, does not make the case one of mistaken identity.[32]

Remedies of Parties.—Purchasers of goods, in cases of mistake, may recover back the price or any portion thereof, which they have paid, where the thing sold has ceased to exist, or is deficient in quantity or weight, or there has been an excessive charge therefor.[33] But the seller of animals cannot refuse to deliver them because the price had advanced instead of declining, as the seller had represented in reliance upon a newspaper report.[34] The determination of the existence or non-existence of a contract, which has been entered into under a mistake as to the subject-matter, may be made in a court of law, in the exercise of its powers as such where no cancellation of the contract is asked.[35] And a contract whereby a county assigned its swamp-land interests will be set aside when made under a material mistake of facts as to their extent.[36] So a bill of sale of personal property is properly reformed on the ground that, by mistake of the seller's secretary, who drew the document, it had been made to include articles which did not belong to the seller, and which were not in fact included in the agreement of sale between the parties, and that otherwise the unpaid price notes could not be enforced.[37]

NATHAN NEWMARK.

San Francisco, Cal.

[26] See Harvey v. Harris, 112 Mass. 32, 37; Gardner v. Lane, 9 Allen, 492, 499, 500. Sale by wrong sample: Scott v. Littledale, 8 El. & B. 813; Megaw v. Malloy, 2 Law R. Ir. 530.

[27] See Boulton v. Jones, 2 Hurl. & N. 564.

[28] See Johnson v. Raylton, L. R. 7 Q. B. D. 438.

[29] See Boston Ice Co. v. Potter, 123 Mass. 28; s. c., 25 Am. Rep. 9; Boulton v. Jones, 2 Hurl. & N. 564. Remedies in special cases: Hills v. Snell, 104 Mass. 173; Dalton v. Hamilton, 1 Hannay (N. B.), 422, 423, 426.

[30] Mitchell v. Lapage, Holt, N. P. 253. But compare Boston Ice Co. v. Potter, 123 Mass. 28, 31; s. c., 25 Am. Rep. 9.

[31] Mudge v. Oliver, 1 Allen, 74. Compare Orcutt v. Nelson, 1 Gray, 536, 542.

[32] Stoddard v. Ham, 129 Mass. 383, 385; s. c., 37 Am. Rep. 369. Compare *Ex parte* Barnett, L. R. 3 Ch. D. 123.

[33] See Strickland v. Turner, 7 Ex. 208; Cox v. Prentice, 3 Maule & S. 344; Calkins v. Griswold, 11 Hun, 208, 211, 213; Scott v. Warner, 4 Lans. 306; Holtz v. Schmidt, 59 N. Y. 253, 257.

[34] Bird v. Forceman, 62 Ill. 212.

[35] Carey v. Gunnison, 22 N. W. Rep. 934, 935, 936. Mistake of fact in description of property in bill of sale, not relievable at law: Lampson v. Cummings, 52 Wis. 491, 496. Defense to price note, that mistake in supposing goods not fit for use: Byers v. Chapin, 28 Ohio St. 300.

[36] Montgomery County v. American Emigrant Co., 47 Iowa, 91 96.

[37] Menomonee, etc. Co. v. Longworthy, 18 Wis. 444, 446; Compare McCloskey v. McCormick, 44 Ill. 336.

CORPORATION— STOCKHOLDER — RIGHT TO EXAMINE BOOKS — JURISDICTION — MANDAMUS.

STETTAUER v. NEW YORK, ETC. COMPANY.

New Jersey Court of Chancery, October Term, 1886.

That a stockholder has been refused permisson to examine the books of the corporation with the assistance of an expert, his bill charging no fraud or misconduct on the part of the directors, but merely alleging that the reason for his examination is to discover whether he has been defrauded by the directors in the distribution of the assets, presents no ground of equitable jurisdiction; his remedy is at law by *mandamus*.

Bill for general relief. On general demurrer.

THE CHANCELLOR: The case stated in the bil is that the New York & Scranton Construction Company was incorporated under the act "concerning corporations" in February, 1881, and carried on its business from the time when it was organized to about May 7th, 1882; that its assets were, from time to time, distributed among its stockholders in pursuance of resolutions of the board of directors, and that on the 7th of May, 1882, the president gave notice to the stockholders that, pursuant to a resolution of the board, the assets remaining in the treasury would be distributed ratably among the stockholders by the treasurer, at his office in New York, on and after that date, upon surrender, by the stockholders, o

their stock certificates, and that a full exhibit of the financial affairs of the company had been prepared for the inspection of all stockholders at that office. It further states that, since May 7th, 1882, the company has carried on no business, and has not exercised any of its franchises; that all its debts and liabilities are paid and discharged; that it has not been dissolved; that no exhibit of the financial affairs of the company was made, as promised in the notice, but that all that was exhibited was a so-called "trial balance" sheet, from which the complainant could not ascertain whether what the directors proposed to pay him was his full share, to which, as a stockholder, he was entitled; that for that reason he refused to take the offered dividend until he should have had an opportunity (for which he then applied) to examine the books, with the aid of a proper expert accountant; permission to do which the treasurer refused to give, alleging that he was, in such refusal, obeying the orders of the board; that the bill stated that thereupon the complainant refused, and ever since has declined to take the dividend; that either soon after, or shortly before that time, Mr. W. S. Dunn, the president, publicly promised, and pledged himself, to give the stockholders a full explanation, so that they could see for themselves that they had received, or were about to receive, all that was due to them as stockholders, but he never did so, although the complainant, from time to time, reminded him of his promise; that in February, 1885, the complainant and another stockholder united in a letter to the president, in which they reminded him of his promise, and requested him to give them an opportunity to examine the books with an expert accountant; that in reply he said that the request was a reasonable one; that he had, long ago, offered to give them full access to the books, and any information they desired; that he was no longer president, and had referred their letter to Mr. F. A. Potts, president of the New York, Susquehanna and Western Railroad Company, who had all the books and papers of the construction company; and added that if Mr. Potts should not give them every facility which they might desire, in order to make a thorough examination, he would, if they would call upon him, see to it that such facilities be afforded to them; that they called upon Mr. Potts, who fixed a day (the 3d day of March then next) upon which they were to come to his office, accompanied by an expert accountant, to make the examination; that on that day they went, according to the appointment, to make the examination, but they were not permitted to do so; that Mr. Potts was absent, but his clerk handed them a note from Mr. Dunn to them, in which he said that at the suggestion of the attorney of the company, and in obedience to the request of prominent stockholders and officers of the company, who deemed the demand for an examination of the books, by an expert, an insult and a reflection upon them, he was induced to say that while they should personally have every opportunity they might desire to examine the books and records of the company at all convenient hours, such permission would not be given to any one accompanying them, nor to any expert specially employed; that that denial was not because of any apprehension whatever as to any transaction which had occurred in the history of the company, but simply because of a desire to resent a personal affront that seemed to be contemplated by the action of the complainant and his fellow-stockholders; and that if, in the course of a personal examination, they should have need of any explanation, he or the treasurer, if called upon, would cheerfully give it. The bill further states that afterwards, in the same month of March, the complainant wrote to the treasurer, and asked and received from him the before-mentioned "trial balance," and that, at about the same time, he met Mr. Potts, and remonstrated with him for denying the privilege he had formerly said he would accord, and Mr. Potts said that he had nothing to do with the matter, that he was simply the custodian of the books.

The suit is brought against the company and the directors, and the bill prays that it may be decreed, that the directors were and are trustees of the property and books of the company for the stockholders; that being such they should make manifest to the stockholders, upon reasonable request, the particulars of the management of the property; that if it can be done without incommoding the management of the business and without involving loss or risk in the management, the directors should, on such reasonable request, admit any stockholder personally, or by his lawfully constituted agent, attorney, servant or accountant, or with the aid of such person, to examine the books, etc., and that no distribution of assets can bind the stockholder or release the directors unless the stockholder assents thereto. The bill also prays that the defendant may be required to give the desired account in this court, and bring the books, etc., into court for examination, and that the directors may be required to pay the complainant his share of the assets. It also prays an injunction against Mr. Potts to prevent him from parting with the books, etc. The defendants have demurred.

The case made by the bill is that the corporation has ceased to do business, although its term of existence has not expired, and that it has not been dissolved. It has paid its debts and divided its remaining assets among the stockholders. The complainant has demanded permission to examine the books with the assistance of an expert accountant, and the permission has been refused, so far, but only so far, as to deny him the aid of the accountant. In extending to the complainant leave to examine the books himself, without the assistance of an expert accountant, the president tendered the aid of himself and the treasurer to give all necessary or desired explanation in the course of the examination. There is no allegation that the complainant is not competent to examine

the books for himself. There is no charge of fraud or mistake or of mismanagement of the affairs of the company. Nor (it may be remarked in passing) is it averred that the demand was made upon the board of directors, the members of which are made defendants with the company, though it is stated that they have deposited the books with Frederic A. Potts, as their agent, and that the complainant has demanded from each one of them the privilege of examining the books, but it has been denied.

The general jurisdiction of this court over corporations does not, in the absence of express statutory authority, extend to the power of dissolving them, nor does it include the power of winding up their affairs, except under peculiar circumstances.

The rights and duties of corporations are in general regulated by the common law; but where there is no plain and adequate remedy at law, and a case is presented which calls for equitable relief, a suit in equity may be maintained. To induce this court to interfere with the management of the affairs of a corporation or to justify it in so doing, there must be some special equitable reason, some wrong done or about to be done, for which the law will not afford adequate redress, as in Cramer v. Bird, L. R. (6 Eq.) 143, where a company was extinct, and the directors had a surplus of assets after paying the debts, which they refused to distribute. It was there held that a suit in equity might be maintained to compel distribution. In this case it is not averred that the complainant has been or is about to be defrauded in the distribution of the assets. He does not allege that the portion set off to him in the final distribution is not his full share of what was then divided, or that what was set off to him in the former distribution was not his full proportion of the assets which were then distributed. What he says is that he does not know whether he has been defrauded or not, and cannot say whether he has received his full share in the former distributions, or whether what has been set off to him in the last one is or is not his full share. To ascertain how the fact is, he wants an opportunity to examine the books and papers of the company, with the aid of an expert accountant. So that, until he shall have examined the books, he cannot say whether he has been aggrieved or not in the distributions. It may be that upon such examina- it will be found that he has no ground of complaint on that score. He does not allege that any unlawful act has been done in the management of the affairs of the company, nor that any is meditated. Clearly his only ground of complaint, and only claim to relief now, is that he has been refused permission to examine the books with the aid of an expert accountant. But that alone is not a ground for equitable interference. The law furnishes him with an adequate remedy in the writ of *mandamus*. High Ex. Rem. § 308; Rosenfeld v. Einstein, 17 Vr. 479.

It is urged on his behalf that the legislature, by the fiftieth section of the act concerning corporations (Rev. p. 186), has conferred upon this court power to compel the production of the books of a corporation. But the power conferred by that section is granted in the special case of a corporation of this State unlawfully keeping its books out of the State. The authority thus given is to be exercised in a summary way and in a special case. It is conferred not only upon the chancellor, but also on the chief justice and each of the associate justices of the supreme court. It cannot properly be construed to confer upon this court any power over corporations which it did possess before the passage of the act, except that which is specifically given. The act is indeed a remedial law, and it must notwithstanding its penal character, be construed liberally (Huylar v. Cragin Cattle Co., 13 Stew. Eq. 392), but it will not admit of such a construction as to confer upon this court the power to compel the production of the books of a corporation for inspection and examination in cases not contemplated by the act. This court has, of course, power to compel such production for the purpose of obtaining evidence to be used in a cause; but the object of the application here is to ascertain whether there is any ground of complaint in reference to the conduct of the direciors, against whom no charge is made nor any imputation cast. No reason is presented for calling them to an account in this court, except the allegation that they deny the complainant's right to have the aid of an expert accountant in his examination of the books, and accordingly, refuse to permit him to examine the books, unless he do it without such assistance. The complainant sues for himself alone to obtain permission to examine the books with professional aid, to see whether he has cause of suit or not. Should an opportunity be accorded to him, and should he fail to discover any fraud or mistake or culpable mismanagement, this suit would be at an end. Should he find such ground of relief, he would be compelled to amend his bill, in order to introduce it. The law gives him an adequate remedy to enable him to discover whether he is aggrieved or not. If he shall find that he is aggrieved, this court will be open to him. The demurrer will be allowed.

NOTE.—The authorities are very full as to the general right of a stockholder to examine the books of the corporation,[1] and the recognition of such right in equity by discovery.[2] Irrelevant parts of the books may be sealed up,[3] but if such irrelevant matter can-

[1] Ang. & Ames on Corp. §§ 681, 682; Field on Corp. § 118; 2 Phil on Ev. 313-316; Hatch v. City Bank, 1 Rob. (La.) 470; Reg. v. Mariquita Co., 1 El. & El. 289; Lewis v. Brainerd, 53 Vt. 519; Field v. Northern Pac. R. Co; 18 Fed. Rep. 471; Whitworth v. Erie R. Co., 5 Jones & S. (N. Y.) 437.

[2] Gresley's Eq. Ev. 116, 117; Knyaston v. East India Co., 3 Swanst. 249; Bolton v. Liverpool, 3 Sim. 467; s. c., 1 Myl. & K. 88; Brace v. Ormund, 1 Meriv. 408; Deaderick v. Wilson, 8 Baxt. 108.

[3] Earp v. Lloyd, 3 K. & J. 549; Napier v. Staples, 2 Moll. 570; Hill v. Great Western R. Co., 10 C. B. (N. S.) 148;

not be separated, the party must produce the whole.[4] What constitutes such a refusal to allow an inspection as justifies the court in allowing a *mandamus* has been decided in England[5] and in a America, as how far false entries, made by an officer who has absconded, affect the rights of petitioner who deals with such officer, *bona fide*, as the representative of the corporation,[6] and as to false statements by the directors to a purchaser as to the value of the stock.[7]

In an action against a corporation, the plaintiff is entitled to inspect all the minutes and entries in the company's books having reference to the subject in litigation,[8] and it includes the agent, solicitor, counsel, or expert of the party asking therefor,[9] and a shareholder who was also the solicitor of opposing litigants, was held to be so entitled.[10] In a few cases an inspection has been allowed where no litigation was pending.[11] In a bill alleging fraud on the part of the directors, whereby complainant, a stockholder, has been damnified, he may obtain such inspection.[12] On a verified petition by one shareholder, stating that a mine owned by the company was being worked at a loss, an inspection of the company's books was granted.[13] In a suit to hold the directors of a life insurance company personally responsible for large losses alleged to have been sustained from moneys improperly paid on policies, an inspection was allowed, although plaintiff was said to have but a trifling interest in the company, and that he was desirous of injuring it, and had published prejudical statements relating to the matters in his bill.[14] On a petition alleging that the petitioner held a large amount of the stock of a corporation, that, notwithstanding its prosperous business, no dividend had been declared for nine years and charging malfeasance on the president and two of the directors, by which the principal part of the company's business had been diverted for their personal benefit, and its funds misappropriated, and further alleging that he had, at a stockholder's meeting, and at other times, asked for information touching the corporation's transactions, which request had invariably been refused, and that he proposed to file a bill in equity against the corporation and its officers, for which purpose it was necessary that he should see the books and papers in order to state the facts correctly—a *mandamus* was issued for the production of such books and papers as contained information upon the subjects specified in the petition.[15] Petitioner averred that a public notice had been issued to attend a stockholder's meeting "to vote upon the reduction of the capital stock, and upon other matters," and that the directors had concealed from him the true condition of the company's affairs, without a knowledge of which he could not vote understandingly. *Held*, that he was entitled to the inspection.[16]

Where a company was being wound up, an application on behalf of twenty-four out of eight hundred and fifty-six shareholders, who had associated themselves together for an investigation into the company's affairs, was allowed, with permission to employ an accountant to prosecute the examination of the books.[17].

A partner gave his executors power to continue his interest in the business for two years after his death. In an action by his infant son against them, an order for an inspection of the partnership books to prepare his complaint was granted, on an affidavit that the executors had conspired with decedent's surviving partner, and had sold him the decedent's interest for less money than its value, etc.[18] In an action by a principal against his agent for an accounting, an inspection, with copy, of the books and vouchers of the agent may be ordered to enable the plaintiff to frame his complaint.[19] In an action for breach of promise of marriage, the defendant, before pleading, was allowed an inspection of all the letters written by him to the plaintiff during the previous two years.[20]

An inspection will not be allowed to gratify mere idle curiosity;[21] nor because some of the books are necessarily kept in another State, where the main office is, in violation of a statute of Connecticut;[22] nor to finish out a defense;[23] nor upon an allegation of belief that the company's affairs are being conducted improperly and the officers unduly chosen, and alleging mismanagement in some particulars not affecting petitioners, nor then in dispute;[24] nor to furnish materials to the other side for a new trial;[25] nor to ascertain whether petitioner would better accept, with the other shareholders, what was offered her for her holding in an old company, which was being wound

Clifford v. Taylor, 1 Taunt. 167; Gerard v. Penswick, 1 Swanst. 533; Dias v. Merle, 2 Paige, 494; Titus v. Cortelyou, 1 Barb. 444; People v. Pacific Co., 50 Barb. 280; Pynchon v. Day (Ill), 22 Reporter, 234.

4 Carew v. White, 5 Beav. 172.

5 Rex v. Wilts Co., 3 Ad. & El. 477.

6 Central Nat. Bank v. White, 5 Jones & S. (N. Y.) 297.

7 Union Nat. Bank v. Hunt, 76 Mo. 439.

8 Hill v. Great Western R. Co., 10 C. B. (N. S.) 148; Harrison v. Williams, 3 B. & C. 162; Burton & Saddler's Co., 31 L. J. (Q. B.) 62; Sinclair v. Gray, 9 Fla. 71. See Hill v. Manchester Co., 5 B. & Ad. 866; Rex v. Buckingham, 8 B. & C. 375; Imperial Gas Co. v. Clarke, 7 Bing. 95.

9 Hide v. Holmes, 2 Moll. 372; Blair v. Massey, L. R. (5 Irish Eq.) 623; Joint-Stock Discount Co.'s Case, 36 L. J. Eq. 150; Bonnardet v. Taylor, 1 Johns. & H. 383; Atty-Gen. v. Whitwood, 40 L. J. (Ch. Div.) 592; Lindsay v. Gladstone, L. R. (9 Eq.) 132; Williams v. Prince of Wales Ins. Co., 23 Beav. 338; State v. Bienville Co., 28 La. Ann. 204; Ballin v. Ferst, 55 Ga. 546. But see Bartley v. Bartley, 1 Drew. 233; Summerfield v. Pritchard, 17 Beav. 9; Draper v. Manchester R. R., 3 DeG. F. & J. 23; West Devon Mine Case, L. R. (27 Ch. Div.) 106.

10 Reg. v. Wilts Co., 29 L. T. (N. S.) 922; Kingsford v. Great Western R. Co., 16 C. B. (N. S.) 761. But see Hutt's Case, 7 Dowl. Pr. 690; Herschfield v. Clark, 11 Exch. 712.

11 Rex v. Lucas, 10 East, 235; Rex v. Tower, 4 Maule & S. 162. See Morgan v. Morgan, 16 Abb. Pr. (N. S.) 291.

12 Walburn v. Ingilby, 1 Myl. & K. 61; Stainton v. Chadwick, 3 McN. & G. 575. See Bassford v. Blakesley, 6 Beav. 131.

13 West Devon, etc. Case, L. R. (27 Ch. Div.) 106.

14 Williams v. Prince of Wales Ins. Co., 23 Beav. 338.

15 Commonwealth v. Phœnix Iron Co., 105 Pa. St. 111.

16 State v. Bienville Co., 28 La. Ann. 204.

17 Joint-Stock Discount Co.'s Case, 36 L. J. Eq. 150. See Emma Silver Mining Co. Case, L. R. (10 Ch. App.) 194; People v. Lake Shore Road, 11 Hun, 1; 70 N. Y. 220.

18 Martine v. Albro, 26 Hun, 559. See Hue v. Richards, 2 Beav. 305.

19 Manley v. Bonnel, 11 Abb. New Cas. 123. See Turner v. Bayley, 34 Beav. 105.

20 Stone v. Strange, 3 H. & C. 541. See Pope v. Lister, L. R. (6 Q. B.) 242; Chute v. Blennerhasset. 16 Irish C. L. ix; Glyn v. Caulfield, 3 Macn. & G. 463; Kerr v. Gillespie, 7 Beav. 572.

21 People v. Walker, 9 Mich. 328.

22 Pratt v. Meriden Co., 35 Conn. 36. See Sykes's Case, 10 Beav. 162; Ervin v. Oregon R. Co., 22 Hun, 566; Cain v. Pullen, 34 La. Ann. 511.

23 Birmingham Co. v. White, 1 Q. B. 282; Imperial Gas Co. v. Clarke, 7 Bing. 95. See Hoyt v. Amer. Ex. Bank, 1 Duer, 652; Shoe and Leather Assn. v. Bailey, 17 Jones & S. (N. Y.) 385.

24 Rex v. Merchant Tailors' Co., 2 B. & Ad. 115.

25 Pratt v. Goswell, 9 C. B. (N. S.) 706.

up, rather than proceed with an arbitration;[26] nor to establish a justification in an action against the petitioner for libel, imputing insolvency to the company;[27] nor to examine all the books of the company for the preceding fifty years, because petitioner alleges that he is dissatisfied with the management of the company and with the accounts, and on other grounds;[28] nor where the petition does not specify the particular books asked for, and the object of the petitioner in making the application to the officers, and also to the court;[29] nor whether certain allegations in the applicant's affidavit are true; nor whether he has documents in his possession relating to the matters in issue.[30] The court may control the *manner* of the examination.[31] An appeal was held to lie from an order granting a party leave to inspect and examine the books of a corporation, the appellant.[32]

JOHN H. STEWART.

[26] Glamorganshire Banking Co., L. R. (28 Ch. Div.) 620.

[27] Metropolitan Co. v. Hawkins, 4 H. & N. 146. See Finlay v. Lindsay, 7 Irish C. L. 1; Collins v. Yates, 27 L. J. Exch. 150; Opdyke v. Marble, 44 Barb. 64.

[28] Reg. v. Grand Canal, 1 Irish Law Rep. 327.

[29] Reg. v. London and St. Catherine's Docks Co., 44 L. J. Q. B. 4. See Hunt v. Hewitt, 7 Exch. 236; Pepper v. Chambers, 7 Exch. 226; New England Iron Co. v. N. Y. Loan Co., 55 How. Pr. 351; Central R. R. v. Twenty-third St. R., 53 How. Pr. 45; Commrs. v. Lemley, 85 N. C. 341; Walker v. Granite Bank, 44 Barb. 39.

[30] Rayner v. Alnusen, 15 Jur. 1060.

[31] Williams v. Prince of Wales Ins. Co., 23 Beav. 338.

[32] Thompson v. Erie R. Co., 9 Abb. Pr. (N. S.) 212; Lancashire Co. v Greatorex, 14 L. T. (N. S.) 290; Cummer v. Kent, 38 Mich. 351; Commrs. v. Lemly, 85 N. C. 341. See Saxby v. Easterbrook, L R. (7 Exch.) 207; Bustros v. White, L. R. (1 Q. B. Div.) 423; Clyde v. Rogers, 24 Hun, 145; McCargo v. Crutcher, 27 Ala. 171; Sage's Case, 70 N. Y. 221. As to the costs of an inspection, see Hill v. Philp, 7 Exch. 232; Davey v. Pemberton, 11 C. B. (N. S.) 629; Gardner v. Dangerfield, 5 Beav. 389.

RAILROADS — NEGLIGENCE — FIRE FROM RIGHT OF WAY SPREADING TO ADJACENT LANDS.

INDIANA, B. & W. R. CO. V. OVERMAN.

Supreme Court of Indiana, February 19, 1887.

1. A railroad company that has negligently permitted combustible substances to accumulate on its right of way, is liable to the proprietor of adjacent lands, if fire, communicated by its trains to such combustible substances, spreads to adjacent land and consumes property of the owner thereof, provided he has not been guilty of contributory negligence.

2. It is not material whether the fire was negligently started or not, the company is liable, in view of its negligence in permitting the accumulation of combustible material on its premises.

HOWK. J., delivered the opinion of the Court:

The first error of which appellant here complains is the overruling of its demurrer to appellee's complaint. The complaint contained four paragraphs, to each of which appellant demurred upon several grounds of objection, but in this court the only objection urged to either paragraph of complaint is that it does not state facts sufficient to constitute a cause of action. In their brief of this cause, appellant's counsel concede that substantially the same facts are stated in each of the firs three paragraphs of the complaint, and therefore we need only to consider and pass upon the question of the sufficiently of one of the separagraphs, and the objections of the counsel thereto, in this opinion.

In the first paragraph of this complaint the appellee averred that he was the owner of certain lands in Henry county, Indiana, and that such land adjoined appellant's railroad and right of way; that a part of his lands was sown with timothy seed, and was producing a large and valuable crop of grass and hay; that appellee's barn, a large and valuable building, was situate on his lands aforesaid, within about 600 feet of appellant's railroad and right of way, and such barn contained a large lot of lumber, and a number of agricultural implements, all of great value, and belonging to appellee; that on or about the eighteenth day of April, 1883, coals were negligently dropped and sparks emitted from appellant's locomotive engine, which set fire to dry grass, weeds, stubble, rubbish, and other combustibles which appellant negligently suffered and permitted to gather, accumulate and remain on its road and right of way, and along its track near appellee's lands, as aforesaid; that the coals dropped from such locomotive, and the sparks of fire emitted therefrom, as aforesaid, set fire to such dry grass, weeds, rubbish, and other combustible substance and materials aforesaid, and that such fire, through the medium of such combustible materials, was then and there carelessly and negligently allowed, suffered, and permitted by appellant to communicate to appellee's lands aforesaid, and then and there burn such growing grass, a large lot of appellee's fence, which was then and there upon his lands, and of great value; and then and there and thereby, without fault or negligence on the part of appellee, said fire, by the negligence of appellant suffered to escape from its premises to appellee's lands, did then and there burn and totally destroy appellee's barn, and his lumber and agricultural implements therein, and the fence and growing grass aforesaid, to appellee's damage in the sum of $1000; wherefor, etc.

It is claimed by appellant's counsel, with much apparent confidence, that this paragraph of appellee's complaint was bad on the demurrer for the want of facts, because it is not stated therein with sufficient certainty or clearness that appellee was free from fault or negligence before the fire escaped, by and through the negligence of appellant, from its road and right of way. Counsel says: "It will be seen that the only allegation that the plaintiff was free from contributory negligence was with respect to the actual burning of property after the fire had escaped to the right of way, and after it had escaped from the right of way to his premises. This is not sufficient." Counsel cites in support of his position the case of

Wabash, etc. R. Co. v. Johnson, 96 Ind. 40. We approve the doctrine of the case cited, but we fail to see that it lends any support to the contention of counsel in the case under consideration. In the case cited the court said: "In the complaint before us, the allegation is that the fire was suffered to escape through the negligence of the defendant, and without the fault of the plaintiff, but it is not averred that the loss resulted without any negligence of the plaintiff. The allegation of the pleading is confined to the act of suffering the escape of the fire, and by no rule of construction can it be extended to embrace the loss or iniury." But in the case before us we are of opinion that, by fair construction, the paragraph of complaint we are now considering has stated, with sufficient clearness and certainty to withstand a demurrer, the escape of the fire from the right of way to appellee's premises, and the burning and destruction of his property, both occurred through the negligence of appellant, and both without fault or negligence on the part of the appellee.

Appellant's counsel also complains in argument of the court's refusal to give the jury two certain instructions at appellant's request. In the first of these instructions the court was asked to charge the jury that, if they found that the fire originated on the right of way, negligence on the part of appellant could not be inferred from that fact alone, bnt the appellee must prove that the fire was caused by some defect or imperfection in appellant's machinery, or by want of care, prudence, or skill on the part of its employees who had charge of its locomotive or train; and, if appellee had failed to prove this by a preponderance of the evidence, they must find for appellant. There was no error, we think, in the refusal of this instruction. It proceeds upon a wrong theory. If appellant set fire to the dry grass and other combustible materials which it had negligently suffered to accumulate on its track and right of way, and, without fault on appellee's part, permitted such fire to escape to his lands, and burn and destroy his property, appellant would be liable to appellee for his damages, whether such fire was negligently started or otherwise. The second instruction requested by appellant proceeds upon the same theory, and is open to the same objections, as the first instruction, and for the same reasons was correctly refused by the court. For the same reasons, also, we think there was no available error in the court's exclusion of the evidence offered by appellant in reference to the kind of stock, fire-box, and ash-pan in use on its locomotives. The facts that appellant negligently permitted dry grass and other combustible materials to accumulate on its road and right of way, and that fire was communicated thereto from its locomotives in some manner, were shown by an abundance of uncontradicted evidence. The appellee's case, however, could not be and was not rested upon these facts, for the appellant had the right to set fire to and burn the dry gross and other combustible materials on its right of way, but it was bound at its peril to keep such fire within the limits of its right of way. The gist of appellee's cause of action, as stated in each paragraph of his complaint, was that the appellant, without any fault of appellee, had negligently permitted such fire to escape from its right of way, and to burn and destroy appellee's property. This cause of action was sustained by sufficient evidence, and no error is manifest in the record before us which requires the reversal of the judgment.

The judgment is affirmed, with costs.

WEEKLY DIGEST

Of ALL the Current Opinions of all the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States.

1. ACTION—Speed of Trains—Damages.——An action for an injury done in a town by a railroad train running at a too great rate of speed may be brought in any county, through which the railroad runs.—*Louisville, etc. Co., v. Saucier*, S. C. Miss., Feb. 28, 1887; 1 South. Rep. 511.

2. ADULTERATION.——In Massachusetts, when milk is seized on account of adulteration, a sample must be preserved in an air-tight vessel and delivered to the person accused, in case of a prosecution.—*Commonwealth v. Lockhardt*, S. J. C. Mass., Feb. 25, 1887; 10 N. E. Rep. 511.

3. ADVANCEMENT—Money Loaned—Presumption. ——Where a testator devises by will to his son a part of his estate, and subsequently loans him money and indorses notes for his accomodation, in the absence of evidence to the contrary, such sums of money and payments on the notes will be considered to be debts and not advancements.—*Dawson v. Macknet*, Prerog. Ct. N. J., March 5, 1887; 8 Atl. Rep. 312.

4. ADVERSE POSSESSION—Constructive.——A party in possession of one tract of land is not in constructive possession of another tract, merely because his deed conveys both tracts to him.—*Ward v. Box*, S. C. Tex., Oct. 22, 1886; 3 S. W. Rep. 93.

5. AMENDMENTS NUNC PRO TUNC—Judgments—Executions.——Amendments of judgments and executions may be made after sales of property under them, and such titles are good unless the defect made the writ void. An amendment of a judgment *nunc pro tunc*, makes it as to all except certain third parties as through the defect had never existed.—*Adams v. Higgins*, S. C. Fla., Jan. 14, 1887; 1 South. Rep. 321.

6. APPEAL.——An appeal will lie from a consent decree.—*Brick v. Brick*, S. C. Mich., Feb. 15, 1887; 31 N. W. Rep. 907.

7. APPEAL.——In Texas, if a party dies after taking an appeal and before giving the prescribed bond, his administrator cannot give the bond and prosecute the appeal.—*Hanlon v. Silk*, S. C. Tex., Feb. 3, 1887; 3 S. W. Rep. 290.

8. APPEAL—Acquiescence in Judgment—Dismissal. ——Where facts are shown under oath to prove acquiescence in the judgment, the case will be remanded to lower court to adduce proof to sustain the motion to dismiss the appeal.—*Pres., etc. of Congregation v. Perche*, S. C. La., Feb. 14, 1887; 1 South. Rep. 543.

9. APPEAL—Appearance—Errors.——Where, on appeal, there is no appearance and no assignment of errors, the judgment will be affirmed.— *State v. Stewart*, S. C. Iowa, March 5, 1887; 32 N. W. Rep. 110.

10. APPEAL — Bond — Attachment. ——An appeal cannot be taken in attachment proceedings till the main suit is determined. It is sufficient in an appeal bond that the judgment is identified therein.—*Forbes v. Porter*, S. C. Fla., Jan. 24, 1887; 1 South. Rep. 336.

11. APPEAL—Bond for Costs—Dismissal.——A failure to comply with the rule, requiring a deposit or bond to secure costs, is ground for a dismissal, when the clerk has not docketed the case.—*Johnson v. Polk County*, S. C. Fla., Jan. 24, 1887; 1 South. Rep. 334.

12. APPEAL — Bond—When Approved.——The appeal bond is a case at law, when the appeal has been prayed during the term, may be approved within thirty days after the term.—*Barrs v. Creary*, S. C. Fla., Jan. 31, 1887; 1 South. Rep. 335.

13. APPEAL—Court of Record.——In New York, by its constitution, an appeal direct to the court of appeals lies from all courts of record which were such in December, 1869, and such appeal does not lie from the marine court of New York city, which was not at that date a court of record.—*Hutkoff v. Demorest*, N. Y. Ct. App., Jan. 18, 1887; 10 N. E. Rep. 535.

14. APPEAL—Freehold Involved.——An appeal from a judgment declaring certain lands subject to the lien of certain judgments, which are directed to be sold, if the judgments are not paid, does not involve a freehold, and an appeal does not lie to this court.—*Blachman v. Preston*, S. C. Ill., Jan. 25, 1887; 10 N. E. Rep. 669.

15. APPEAL — Frivolous—Motion to Affirm. ——A motion to affirm a judgment, on the ground that the appeal is frivolous and for delay, cannot be heard during motion hour; the case must be heard regularly on the docket.—*Dzialyuski v. Bk. of Jacksonville*, S. C. Fla., Jan. 24, 1887; 1 South. Rep. 338.

16. APPEAL—New Trial—Weight of Evidence.——A new trial will not be granted by the appellate court, on the ground that the verdict is against the weight of the evidence.—*Agnew v. Adams*, S. C. S. Car., Feb. 14, 1887; 1 S. E. Rep. 414.

17. APPEAL—Practice.——In Indiana, an assignment of errors must be filed within one year after the final judgment in the trial court.—*Bacon v. Withrow*, S. C. Ind., March 8, 1887; 10 N. E. Rep. 624.

18. APPEAL—Quo Warranto. ——A *quo warranto* proceeding, in Indiana, is a civil action. In an appeal in such a case it is not necessary when there is an absolute failure of jurisdiction as, when the proceeding is in the wrong county, for the appellate court to give "a statement in writing of each question arising on the record, etc., as provided in the constitution, art. 7 § 5.—*Robertson v. State ex rel.*, S. C. Ind., Feb. 28, 1887; 10 N. E. Rep. 582.

19. APPEAL—Statute — Execution.——Construction of Rev. Stat. Wisconsin, § 3049, relating to notice of appeal. If a notice does not specify the part of an order appealed from, the presumption is that the appeal is from the whole order. An execution requiring the return of specific chattels or the collection of the judgment authorizes the latter alternative, if the officer is not satisfied that the chattels he finds are those which were meant by the execution.—*Irvin v. Smith*, S. C. Wis., March 1, 1887; 31 N. W. Rep. 909.

20. APPEAL — Weight of Evidence — Review.—— Where the jury accepts the evidence of one witness against that of five others, all equally credible and with equal knowledge, the trial court or the appellate court may pass on the sufficiency of the whole testimony, if the point is presented.—*Mead v. Conroe*, S. C. Penn., Oct. 4, 1886; 8 Atl. Rep. 374.

21. ARREST—Civil Action— Fraud — Examination. ——Conversion of the proceeds of stock sold for another shows an oblication fraudulently incurred, and in a civil action on the motion to vacate the arrest, the defendant cannot refuse to answer questions which tend to criminate him.—*Este v. Wilshire*, S. C. Ohio, Feb. 4, 1887; 10 N. E. Rep. 677.

22. ARREST—Debtor — Magistrate's Certificate.—— A magistrate's certificate will authorize the arrest of a debtor because it states he is satisfied on the evidence that the charge made in the affidavit is true.—*May v. Hammond*, S. J. C. Mass., Feb. 26, 1887; 10 N. E. Rep. 751.

23. ARSON— Husband and Wife.——An indictment for burning a dwelling house which states the name of the owner, need not state the name of the person who occupied it at the time. A husband may be in-

dicted for burning his wife's house, in Indiana.—*Garrett v. State*, S. C. Ind., Feb. 18, 1887; 10 N. E. Rep. 570.

24. ASSIGNMENT.——The trust of an assignee for the benefit of creditors is personal, and upon his death does not pass to his widow, who cannot prosecute or defend suit relating to such trust which may be pending at the death of such trustee.—*Waessner v. Crank*, S. C. Tex., Feb. 15, 1887; 3 S. W. Rep. 318.

25. ASSIGNMENT — Avoiding Preferences.——An assignment by an insolvent for the benefit of his creditors is a proceeding against him, under the Rhode Island law, avoiding conveyances made by one in contemplation of insolvency.—*Market Nat. Bk. v. Heintzeman*, S. C. R. I., Jan. 15, 1887; 8 Atl. Rep. 78.

26. ASSIGNMENT FOR CREDITORS — Fraudulent Mortgage— Action by Assignee.——An assignee for the benefit of creditors cannot by an action of replevin try to set aside a mortgage made by his assignor as in fraud of his creditors.—*Frost v. Cit. Nat. Bk. of Beloit*, S. C. Wis., March 1, 1887; 32 N. W. Rep. 110.

27. ASSIGNMENT—Mortgage— Power of Sale.——If there is no legislation to the contrary, a debter even if insolvent may assign his property preferring certain creditors. A conveyance with power vested in the trustee to sell and pay enumerated debts is a mortgage. Any surplus remaining after the execution of such a trust is subject to process, at the suit of any creditors, but the execution of such a trust cannot be impeded by an attachment.—*Scott v. McDaniel*, S. C. Tex., Feb. 4, 1887; 3 S. W. Rep. 291.

28. ASSUMPSIT—Quantum Merrit—Pass.——An annual pass on a railroad is of too uncertain a value to be held the measure of damages for a breach of a contract for such a pass. The party is entitled to recover on *quantum merrit* the value of the services for which the pass was to be given.—*Brown v. St. Paul, etc. Co.*, S. C. Minn., Dec. 21, 1886; 31 N. W. Rep. 941.

29. ATTACHMENT — Appeal —Fraud.——An agreement by the buyer upon buying goods on credit, that if he shall become insolvent he will prefer the vendor to the value of the goods, is not in fraud of his other creditors and does not warrant an attachment. An attachment however will be ordered if, soon after a representation that he was solvent, the debtor declares himself insolvent, offers to pay fifty cents on the dollar, threatening that if his offer is not accepted he will so arrange matters that the creditor will only get twenty-five cents on the dollar. Ruling as to appeals from general term in New York.—*National, etc. Bank v. Whitmore*, N. Y. Ct. App., Feb. 1, 1887; 10 N. E. Rep. 524.

30. ATTACHMENT—Bond—Judgment—Surety.——A surety on a bond given to release an attachment is concluded by the judgment against his principal, if it was regularly rendered.—*Fusz v. Trager*, S. C. La., March 7, 1887; 1 South. Rep. 535.

31. ATTACHMENT — Bond — Pennsylvania Act.——The defendant must wait till a final judgment in his favor in the action before he can sue on the attachment bond under the Pennsylvania act.—*Harbert v. Gormley*, S. C. Penn. Jan. 24, 1887; 8 Atl. Rep. 415.

32. ATTACHMENT — Rent — Affidavit.——In Mississippi, the affidavit for attachment may be sworn to before any officer competent to take affidavits, and justices of the peace are such.—*Cassedy v. Meyers*, S. C. Miss., Feb. 28, 1887; 1 South. Rep. 510.

33. ATTORNEY — Special Deposit—Summary Jurisdiction.——Where plaintiff dismisses suit upon deposit of a sum by defendant for use of wards for whom the suit is prosecuted, with the consent of the probate court, the court can compel the attorney of the plaintiff, to whom the money is paid, to pay it all over by summary proceedings.—*Anderson v. Bosworth*, S. C. R. I., Feb. 5. 1887; 8 Atl. Rep. 339.

34. BAIL—Citation.——The citation to a surety in a bail-bond must be distinct and definite. A misnomer is fatal to sufficiency of the process.—*Vidauri v. State*, Tex. Ct. App., Jan. 15, 1887; 3 S. W. Rep. 347.

35. BAIL—Recognizance.——A recognizance which fails to state the time when the party is to appear is utterly void.—*Wright v. State*, Tex. Ct. App., Jan. 12 1887; S. W. Rep. 346.

36. BANKS—Collection.——If a bank indorses a draft to another bank, which indorses it to a third, which collects the amount, the third bank cannot hold the proceeds for a debt which the second bank owes it, but must hold as trustee for the owner to whom it is liable for money it has collected.—*City Bank of Sherman v. Weiss*, S. C. Tex., Feb. 8, 1887; 3 S. W. Rep. 299.

37. BANKS — Collections — Agents.——Where one sends notes to another for collection, the latter is an agent for the former, and though it does not keep the collections separate from its own funds, yet it must pay to the first bank the full collection, even though it has become insolvent and is in the hands of a receiver.—*Thompson v. Gloucester*, N. J. Ct. Ch., Feb. 17, 1887; 8 Atl. Rep. 97.

38. BENEFIT SOCIETIES— Expulsion — Appeal.——A member of a benefit society having been expelled, appealed to the grand dictator and died. The grand dictator reversed the decision. *Held*, that the appeal did not abate by his death, and that his benefit must be paid.—*Marck v. Supreme Lodge, etc.*, U. S. C. C. (N. Y.), Feb. 14, 1887; 29 Fed. Rep. 896.

39. BILLS AND NOTES — Promissory Note — Estoppel—Capacity of Payee.——A maker of a promissory note is estopped against a *bona fide* holder for value, from asserting that the payee could not transfer the note in the usual course of business.—*Wolke v. Kuhne*, S. C. Ind., Jan. 27, 1887; 10 N. E. Rep. 116.

40. BOND—Official Bond—Probate Judge—Damages —Measure of — Tax-roll.——In Alabama, it is the duty of the probate judge, as probate judge, to make and deliver to the collector a tax-roll. For failure to do so, within the prescribed time, he and his sureties on his official bond are liable to a creditor of the county, and the measure of damages is the loss and trouble caused to the plaintiff by the default.—*Branch v. Davis*, U. S. C. C. (Ala.), November Term, 1886; 29 Fed. Rep. 888.

41. BOUNDARIES— Establishing — Processioners — Postponement.——A proceeding to mark the boundary line, of which due notice has been given, may be postponed for due cause, the adjoining proprietor being notified by verbal or written notice of such postponement.—*Phillip v. Chapman*, S. C. Ga., Jan. 25, 1887; 1 S. E. Rep. 427.

42. CARRIERS — Goods — Delay — Act of God.——Where delivery of goods is delayed by a flood, but on its subsidence it is immediately accomplished, the carrier is excused on account of an act of God, even though similar floods had occurred in the two preceding years, but prior to that were unprecedented.—*Norris v. Savannah, etc. R. Co.*, S. C. Fla., March 1, 1887; 1 South. Rep. 475.

43. CARRIERS — Passengers — Breach of Contract — Waiver.——Where a passenger is told by the conductor that the train will not run to the point to which he has paid his fare, and he gets off, he has a right of action, but he waives it if he receives back his fare for the unfinished part of his journey.—*Florida, etc. R. Co. v. Katz*, S. C. Fla., Feb. 28, 1887; 1 South. Rep. 473.

44. CARRIERS —Of Passengers — Trespasser. —— A trespasser on a train cannot be ejected therefrom without reasonable regard for his safety. Whether due care in this respect has been exercised is a question for the jury. Whether a person is a mere trespasser, or a passenger acting under a mistake, is also a question of fact for the jury.—*Arnold v. Pennsylvania, etc. R. Co.*, S. C. Penn., Feb. 7, 1887; 8 Atl. Rep. 213.

45. CARRIERS—Sleeping Cars—Regulations — Ejection of Passengers.——A passenger who applies to a sleeping car company for a ticket, which is refused, because contrary to the regulations of the railroad company, may be removed from the sleeping-car, without unnecessary violence.—*Lawrence v. Pullman, etc. Co.*, S. J. C. Mass., Feb. 24, 1887; 10 N. E. Rep. 723.

46. CHATTEL MORTGAGE—Sale Under Execution—Damages of Mortgagee.——Where personal property, in possession of the mortgagor, after condition broken, is sold under an execution against the mortgagor, the mortgagee has an action against the officer and the execution creditor, and his damages are the value of the property, as ascertained by the sale, to the amount of his debt and accrued interest.—*Williams v. Dobson*, S. C. S. Car., Feb. 14, 1887; 1 S. E. Rep. 421.

47. COLLISION—A steamer, bound to keep out of the way, must, at her peril, see that she has a safe margin.—*The City of Springfield*, U. S. D. C. (N. Y.), Jan. 31, 1887; 29 Fed. Rep. 923.

48. COLLISION—Rules of Navigation — Statute.—— In the adjudication of collision cases between steamers and sailing vessels, the leading rule is that the steamer must keep out of the way, and the sailing vessel shall keep her course. U. S. Rev. Stat. § 4233, construed.—*Harmark v. The I. C. Harris*, U. S. C. C. (Tex.), Nov. 1886; 29 Fed. Rep. 926.

49. CONSTITUTIONAL LAW—Approval of Bill—Adjournment of Legislation.—— The governor of Mississippi may approve a bill after the adjournment of the legislature, if it adjourn within five days after the presentation thereof to him.—*State v. Bd. Sup. Coahoma Co.*, S. C. Miss., Feb. 26, 1887; 1 South. Rep. 501.

50. CONSTITUTIONAL LAW—Election—United States Commissioner—Contempt— Habeas Corpus.—— Congress has no power to regulate State elections in which a representative in congress is to be elected in matters which do not concern the election of such representative. A United States commissioner has no right to examine persons brought before him on an affidavit charging facts, said to be offenses against the United States, but which in fact are not. Such a commissioner has no power to punish for contempt under U. S. Rev. Stat. § 1014. A person so illegally punished will be released upon *habeas corpus*.—*Ex parte Perkins*, U. S. C. C. (Ind.), March, 1887; 29 Fed. Rep. 900.

51. CONSTITUTIONAL LAW—Local Acts—Towns.—The New Jersey act of April 22, 1886, relative to borough governments, is a local law, and is unconstitutional.—*State v. Sloane*, S. C. N. J., Feb. 17, 1887; 8 Atl. Rep. 101.

52. CONSTITUTIONAL LAW —Working Criminals — Sentence.——The law, authorizing the employment of convicts in county jails at hard labor, is not unconstitutional, by the fact that it does not provide for the mention thereof in the sentence of conviction—*Holland v. State*, S. C. Fla., Feb. 28, 1887; 1 South Rep. 521.

53. CONTRACTS— Covenants — Parol Agreement Pleadings—Oyer—Variance.——Where a contract under seal provides for certain acts to be done, as mutually agreed upon, and the terms are afterwards settled by parol, a suit for breach of the terms may be brought on the covenant. A variance between the contract as stated in the petition and as shown on oyer is only available on demurrer when it amounts to an answer to plaintiff's case.—*Potts v. Point Pleasant L. Co.*, S. C. N. J., Feb. 17, 1887; 8 Atl. Rep. 109.

54. CONTRACT — Joint Executors — Relinquishing Office.—A contract, whereby one joint executor renounces his right to qualify as such, in consideration of one-half of the commissions, is valid.—*Ohlendor v. Kanne*, Md. Ct. App., Jan. 21, 1887; 8 Atl. Rep. 351.

55. CONTRACT — Mortgage — Support. ——When mortgagors agree to support a mortgagee during her life, and she agrees in that case that the mortgage shall be fully satisfied, such support during her life is a condition precedent to the satisfaction of the mortgage.—*Stoel v. Flanders*, S. C. Wis., March 1, 1887; 32 N. W. Rep. 114.

56. CONTRACT—Parol Evidence — Usury. ——Parol evidence is admissible to show usury in a written contract—*Grayson v. Brooks*, S. C. Miss., Feb. 14, 1887; 1 South. Rep. 482.

57. CONVEYANCES—Metes and Bounds—History of Title.——A description of land in a conveyance by metes and bounds, overrules a statement of the history of the title.—*Sherwood v. Whitney*, S. C. Conn., Feb. 15, 1887; 8 Atl. Rep. 80.

58. CORPORATIONS— Existence—Proof of — Appeal from a Justice.——A corporation, on an appeal from a justice, is not bound to prove its corporate existence, if no objection was made to its failure to do so before the justice.—*State v. N. Y. etc. Co.*, S. C. N. J., Feb. 17, 1887; 8 Atl. Rep. 290.

59. COSTS—Appeals.——Rule as to taxing costs of printing when there are two appeals. Only one printed case will be taxed.—*Irvin v. Smith*, S. C. Wis., March 1, 1887; 31 N. W. Rep. 912.

60. COSTS—Demurrer—Statute.——A case litigated on demurrer is, within the meaning of California statute (1865-6), a litigated case as to costs.—*Packard v. Wilson*, S. C. Cal., March 1, 1887; 13 Pac. Rep. 220.

61. COSTS—Solicitor's Fee — Witness' Fee.——The rule is, that costs are authorized only by statute, and nothing can be taxed as costs without statutory sanction. Ruling as to solicitor's fees under U. S. Rev. Stat. § 824. In federal courts, a witness' fee to a party to the action may be taxed as costs.—*Tuck v. Olds*, U. S. C. C. (Mich.), October Term, 1886; 29 Fed. Rep. 883.

62. COUNTY—Boundary Line—Report.——The report of the commissioners on a county boundary line will not be disturbed, unless there is clear proof that it is erroneous.—*State v. Bd. of Chosen Freeholders*

of Atlantic Co., S. C. N. J., Feb. 17, 1887; 8 Atl. Rep. 111.

63. COUNTY TREASURER—City Treasurer—Paying over Money.——A county treasurer cannot refuse to pay over in money to a city treasurer because the money so paid to him was paid under protest.—*Ratherman v. State*, S. C. Ohio, Feb. 24, 1887; 10 N. E. Rep. 678.

64. COURT—Judge—Acts in Vacation.——An objection to the jurisdiction, if available if made in the term, is available against the judge's jurisdiction in vacation.—*Robertson v. State*, S. C. Ind., March 11, 1887; 10 N. E. Rep. 643.

65. COURT — Jurisdiction — Legislation —Constitutional Law.——The circuit courts have original jurisdiction of criminal cases by the constitution, which can only be taken away by legislation, and which instantly revives so soon as such legislation expires or is repealed.—*Anderson v. Com.*, Ky. Ct. App., Feb. 15, 1887; 3 S. W. Rep. 127.

66. CONSTITUTIONAL LAW—Legislative Power.——Legislative power is practically absolute, except when the constitution imposes limits upon it, and such limits are to be strictly construed.—*Baldwin v. State*, Tex. Ct. App., June 23, 1886; 3 S. W. Rep. 109.

67. COVENANT—Breach of—Party Wall.——A conveyed to B certain land, on which C had encroached a few inches by a building, for which A obtained damages, but retained the fee. C, who did not know of the easement, was held to be entitled to damages against A for breach of covenant by reason of the easement.—*Edmund's Appeal*, S. C. Penn., Jan. 17, 1887; 8 Atl. Rep. 31.

68. CRIMINAL LAW—Aiding Escape—Accomplice—Witness.——A party who was aided to escape from jail is not an accomplice of the assisting party, under Alabama law, and is a competent witness against the latter in prosecution for that act.—*Ash v. State*, S. C. Ala., Feb. 23, 1887; 1 South. Rep. 558.

69. CRIMINAL LAW—Autrefois Acquit—Higher Offense—Instruction.——A conviction of an inferior degree of an offense is an acquittal of the higher degree, and an instruction, that if the higher degree is proved, the jury may find the defendant guilty of the lesser degree, is not correct.—*Parker v. State*, Tex. Ct. App., Oct. 27, 1886; 3 S. W. Rep. 100.

70. CRIMINAL LAW—Autrefois Convict—Greater Offense.——A conviction of an aggravated assault on an indictment for an assault to commit murder is no bar to an indictment for murder, the assaulted party having subsequently died.—*Curtis v. State*, Tex. Ct. App., Nov. 13, 1886; 3 S. W. Rep. 86.

71. CRIMINAL LAW— Bill of Exceptions — Grand Jury— Report.——A bill of exceptions not signed by the trial judge will not be noticed. An indictment will not be invalid, because their final report was drawn by an outsider, who was not present at any of their deliberations and did not otherwise assist them.—*State v. Harris*, S. C. La., Feb. 14, 1887; 1 S. Rep. 446.

72. CRIMINAL LAW—Charge to the Jury — Appeal.——In Texas, the court must distinctly, in his charge to the jury, set forth the law applicable to the case. A failure so to do may be taken advantage of for the first time on the appeal.—*Jackson v. State*, Tex. Ct. App., Nov. 27, 1886; 3 S. W. Rep. 111.

73. CRIMINAL LAW — Continuance — Appeal.——Where the action of the trial court, in refusing a continuance upon the admission by the State that the absent witness would testify as stated in the application, is not urged in the motion for a new trial, it is waived.—*State v. Jewell*, S. C. Mo., Jan. 31, 1887; 3 S. W. Rep. 77.

74. CRIMINAL LAW—Continuance—Interrogation of Accused.——Where the accused was interrogated about his affidavit for a continuance, whereby he contradicted himself, it was improper practice to prove such contradictions by the attorney of the accused, when the affidavit had been admitted as the evidence of the absent witness. It was improper to interrogate the accused about the affidadit. *Hubbard v. State*, S. C. Miss., Feb. 14, 1887; 1 South. Rep. 489.

75. CRIMINAL LAW—Continuance— Fine.——A motion for a continuance in a capital case, where offense occurred nine days before, and the accused could only procure counsel one day before, should be granted.—*State v. Brooks*, S. C. La., Feb. 14, 1887; 1 South. Rep. 421.

76. CRIMINAL LAW—Dying Declarations.——Testimony to show that the party whose dying declaration has been admitted in evidence, had no religious belief, is admissible.—*Hill v. State*, S. C. Miss., Feb. 28, 1887; 1 South. Rep. 494.

77. CRIMINAL LAW— Evidence—Grand Jury—Confession.——A confession voluntarily made before the grand jury, by one charged with crime, is admissible in evidence against him, and may be proved by grand jurors.—*United States v. Kirkwood*, S. C. Utah, Feb. 2, 1887; 13 Pac. Rep. 234.

78. CRIMINAL LAW — Indictment—Crap-board.——An indictment stating that the contrivance by which the money was won or lost was commonly called a crap-board, is insufficient, under the Kentucky law, against gaming.—*Jones v. Com.*, Ky. Ct. App., Feb. 17, 1887; 3 S. W. Rep. 128.

79. CRIMINAL LAW—Indictment—Larceny—Amendment as to Ownership.——The law, allowing an indictment for larceny to be amended as to the allegation of the ownership of the property stolen, is constitutional.—*State v. Hanks*, S. C. La., Feb. 14, 1887; 1 South. Rep. 458.

80. CRIMINAL LAW—Variance — Name of Injured Party—Amendment.——Where, upon a trial for seduction, the name of the injured party is not correctly stated, the court may order the indictment amended in that respect.—*People v. Johnson*, N. Y. Ct. App., Jan. 18, 1887; 10 N. E. Rep. 690.

81. CRIMINAL LAW—Instructions—Application.——The instructions should apply to the theories of the facts as claimed by the parties, rather than to general principles or rules of law.—*Lamar v. State*, S. C. Miss., Feb. 14, 1887; 1 South. Rep. 354.

82. CRIMINAL LAW—Instruction—Doubt.——An instruction that the jury must acquit if there is any doubt of the guilt of accused, is misleading, as not distinguishing the degrees of doubt.— *Humbree v. State*, S. C. Ala., Feb. 15, 1887; 1 South. Rep. 548.

83. CRIMINAL LAW— Irregularities at Trial — Appeal.——Case will not be reversed on account of alleged irregularities at the trial, to which no exceptions were taken.—*State v. Boyce*, S. C. La., Feb. 14, 1887; 1 South. Rep. 450.

84. CRIMINAL LAW—Jurisdiction—Appeal.—— The supreme court has no jurisdiction of an appeal from a judgment quashing an information for an offense pun-

ishable by a fine, or in default by imprisonment other than at hard labor.—*State v. Smith*, S C. La., Feb. 14, 1887; 1 South. Rep. 452.

85. CRIMINAL LAW—Jury — Venire. —— Where the special venire for a jury in a criminal case omits the names of the court and county, but states them later in the mandatory part, the omission is cured.—*Murray v. State*, Tex. Ct. App., June 5, 1886; 3 S. W. Rep. 104.

86. CRIMINAL LAW — Homicide — Self-defense.—— One is not justified in killing his assailant, who is unarmed and is not his superior in physical power.—*Wall v. State*, S. C. Miss., Feb. 14, 1887; 1 South. Rep. 351.

87. CRIMINAL LAW — Murder — Indictment.——An indictment for murder must charge that the accused killed the deceased; it is not sufficient to charge that he murdered him.—*Pierce v. State*, Tex. Ct. App., June 25, 1886; 3 S. W. Rep. 111.

88. CRIMINAL LAW—Murder—Surrounding Circumstances—Statements of Accused.——In a murder trial, all the circumstances relative to the condition of the body of the murdered man when found, and as bearing on his probable actions after he was last seen, and all the actions and surroundings of the accused as bearing on suspicious circumstances in the case, are admissible in evidence. Statements made by the accused, when under the influence of liquor given him by the officer having him in charge, are not admissible.—*McCabe v. Com.*, S. C. Penn., Oct. 18, 1886; 8 Atl. Rep. 45.

89. CRIMINAL LAW—Poison, Proof of.——Held, that the evidence was not sufficient to prove that the article used was poison.—*Osborne v. State*, S. C. Miss., Feb. 14, 1887; 1 South. Rep. 349.

90. CRIMINAL LAW — Prohibition—Certiorari—Sunday Law.——Where a party is prosecuted under a law, to which a plea of uncontitutionality has been overruled and there is no appeal allowable, a case is presented for the surpervisory jurisdiction of the supreme court. The Louisiania Sunday law is constitutional.—*State v. District Judge*, S. C. La., Feb. 7, 1887; 1 South. Rep. 437.

91. CRIMINAL LAW—Time — Indictment.——An indictment charging an offense subsequent in date to its presentment is fatally defective.—*Lee v. State*, Tex. Ct. App., Dec. 8, 1886; 3 S. W. Rep. 89.

92. CRIMINAL LAW — Vagrancy—Wife's Testimony. ——A wife is not admissible as a witness against her husband in a prosecution against him for vagrancy.—*Merriwether v. State*, S. C. Ala., Jan. 28, 1887; 1 South. Rep. 560.

93. CRIMINAL PRACTICE — Appeal —Justice—Statute.——Under Iowa code § 4702, one who has pleaded guilty in a justice's court, cannot upon appeal withdraw that plea in the district court.—*State v. Farlee*, S. C. Iowa, March 3, 1887; 31 N. W. Rep. 952.

94. DEED— Execution — Acknowledgment — Presumption.——A deed in the hands of the grantee will be presumed to have been executed on the day it bears date, especially when regularly acknowledged on the same day.—*Cover v. Manaway*, S. C. Pa., Feb. 21, 1887; 8 Atl. Rep. 393.

95. DESCRIPTION—Chattel Mortgage — Execution—Levy.——"180 head of Merino and Cotswold sheep in," a named county is a sufficient description in a chattel mortgage. An execution is not levied if the officers merely indorses words indicating a levy on the process, even in the presence of the property and fails to notify any one of the levy, and leaves the property in the possession of the debtor.—*Crisfield v. Neal*, S. C. Kan., March 4, 1887; 13 Pac. Rep. 272.

96. DIVORCE — Alimony Pendente Lite.——Under the pleadings in this case, the court could hear evidence on the question of alimony *pendente lite*.—*McFarland v. McFarland*, S. C. Miss., Feb. 28, 1887; 1 South. Rep. 508.

97. DIVORCE — Charges — Evidence.——Charges of cruelty, violence and disregard of wifely duties are immaterial in a suit by a husband for divorce, and general charges of adultery with proof of acts susceptible of an innocent interpretation are insufficient.—*Powell v. Powell*, S. C. Ala., Feb. 23, 1887; 1 South. Rep. 549.

98. DIVORCE—Decree Nisi — Marriage——A decree of divorce *nisi* does not dissolve a marriage, and a second marriage before the absolute decree is void.—*Cook v. Cook*, S. J. C. Mass., Feb. 26, 1887; 10 N. E. Rep. 749.

99. DOWER—Assignment — Writ of Posession.—— Upon approval of the assignment of dower, the court may direct a writ to issue to put the widow in possession of the land.—*Agnew v. Lichten*, S. C. Ill., Jan. 25, 1887; 10 N. E. Rep. 667.

100. DIVORCE—Loathsome Disease — Cruel Treatment.——Where a husband did not inform his wife till after the marriage that he had a loathsome disease, and such knowledge was calculated to cause her mental pain and anguish to such a degree as to endanger her health and life, such conduct constituted cruel and abusive treatment, under the divorce law.—*Leach v. Leach*, S. J. C. Me., Feb. 11, 1887; 8 Atl. Rep. 349.

101. DOWER — Partnership Land — Trustee.—— Where several parties in another State associated themselves together to buy land in Iowa, conveying it to a trustee with power to sell, who should from time to time divide the proceeds among them: *Held*, that such land was personalty as to their creditors and for the objects of the association, and the widow of one of the associates was not entitled to dower therein.—*Malory v. Russell*, S. C. Iowa, March 4, 1887; 32 N. W. Rep. 102.

102. DOWER — Release — Lunatic Husband.——An agreement between a wife and the children and the committee of her lunatic husband, by which she received certain choses in action in lieu of her inchoate dower, was a valid release of her dower.—*Jones v. Fleming*, N. Y. Ct. App., March 1, 1887; 10 N. E. Rep. 693.

103. DRAINAGE— Waiver of Defective Notice—Appeal.——Where a party appears in a drainage proceeding and files a remonstrance, he waives any defect in the notice. An appeal stops all further proceedings, and only questions can be raised which were ruled on by the lower court.—*Ford v. Ford*, S. C. Ind., March 10, 1887; 10 N. E. Rep. 648.

104. EJECTMENT—Unsettled Estate—Judgments — Liens.——Where an estate is unsettled, the administrator is the person to bring an action of ejectment. A judgment from the United States court is a lien on all lands of the defendant in the district.—*Doyle v. Wade*, S. C. Fla., Feb. 28, 1887; 1 S. E. Rep. 516.

105. EJECTMENT—Vendor—Lien—Purchaser—Execution——.A purchaser at an execution sale acquires o nly defendant's title, and the vendor of the defendant

cannot bring an ejectment suit against such purchaser. *Lissa v. Posey*, S. C. Miss., Feb. 28, 1887; 1 South. Rep. 500.

106. ELECTIONS—BRIBERY—ILLEGAL VOTING.—An indictment, under U. S. Rev. Stat. § 5511, for bribery or illegal voting, will not be quashed because it does not charge that the illegal vote was cast or the bribe given with reference to the election of a representative in congress, the election being held for State and local offices as well.—*United States v. McBosley*, U. S. D. C. (Ind.), Dec. 28, 1887; 29 Fed. Rep. 897.

107. ELECTION—County-seat—Fraudulent Canvass of Votes.—A canvass of the votes cast at an election to fix a permanent county-seat, made by commissioners at 3 o'clock A. M. at an improper place, and without due notice to other members of the board, is fraudulent and void.—*State ex rel. v. Harwood*, S. C. Kan., March 4, 1887; 13 Pac. Rep. 212.

108. ELECTION—Where Held—Officers — Costs.—An election held at a place other than the one established as an election precinct, or by officers all of whom are not qualified to act, is invalid, under the Georgia law. In election contests costs cannot be awarded against the county.—*Walker v. Sanford*, S. C. Ga., Jan. 18, 1887; 1 S. E. Rep. 424.

109. EMINENT DOMAIN—Schools—Selection of Site—Notice—Quashing.—A vote of the district to select a site may follow the vote to build a school-house. The record of the clerk is *prima facie* evidence that the meeting was duly notified without detailing all the steps taken, and the proceedings can only be quashed for errors apparent on the record.—*Howland v. School Dist. No. 3*, S. C. R. I., Feb. 5, 1887; 8 Atl. Rep. 337.

110. EMINENT DOMAIN—Streets—Use by Railroad—Right of Action.—Where the land as described in a deed is bounded by a street or abuts thereon, the grantee owns to the middle of the street, subject to the public easement, and is entitled to compensation if a railroad is laid on the street, if at all, on his part thereof. Where the abutting property owner does not own any of the street, he has a cause of action if a railroad is so laid as to materially abridge or curtail his use of the street, or if it is negligently operated to his injury, but the diminuation of the value of his property is not an element of his damage.—*Florida, etc. R. Co. v. Brown*, S. C. Fla., Feb. 28, 1887; 1 South. Rep. 512.

111. EQUITY—Covenant to Build—Removal of Earth—Fee Simple Deed.—Where A conveys land to B by fee simple deed, receiving a rent with a covenant to build, which land subsequently is conveyed to C, a bill by A against C to restrain him from removing earth therefrom will not lie.—*Lafferty's Appeal*, S. C. Pa., Jan. 17, 1887; 8 Atl. Rep. 414.

112. EQUITY—Deed—Infirm Grantor—Devisee.—Equity will set aside a mortgage given to secure a pre-existing debt at the instance of a devisee, if the testator was of insufficient mental capacity to execute the deed, without the existence of fraud or undue influence.—*Bingham v. Fayerweather*, S. J. C. Mass., Feb. 25, 1887; 10 N. E. Rep. 735.

113. EQUITY—Demurrer—Multifariousness—Creditor's Bill.—A bill in chancery, filed by creditors of a partnership, by creditors of surviving partner, and by creditors of deceased partner, against surviving partner and the heirs, devisees and legatees of the deceased partner, to ascertain the various assets and subject them to the proper charges in each case, is demurrable for multifariousness.—*Sadler v. Whitehurst*, S. C. App. Va., March 17, 1887; 1 S. E. Rep. 419.

114. EQUITY—Practice—Appeal.—Where a suit to foreclose a chattel mortgage has been dismissed, on the ground that the mortgage *had* been foreclosed and the chattels sold, the judgment will not be reversed, although the proceedings had not been regular.—*Hoag v. Madden*, S. C. Iowa, March 3, 1887; 31 N. W. Rep. 954.

115. EQUITY—Practice—Exceptions to Answer.—In equity, exceptions to an answer must be signed by counsel.—*Hitchcock v. Rhodes*, N. J. Ct. Ch., March 5, 1887; 8 Atl. Rep. 317.

116. EQUITY—Quieting Title—Possession.—A bill to quiet title does not lie by one not in possession against one in possession under foreclosure of a mortgage, which the complainant prays may be satisfied and discharged.—*Russell v. Barstow*, S. J. C. Mass., Feb. 25, 1887; 10 N. E. Rep. 746.

117. EQUITY—Specific Performance—Dissolution of Partnership.—Where partners leased a newspaper, with the privilege of renewal to the firm, or to the one succeeding to the business, or to a new partnership satisfactory to the defendant, they may compel a renewal, though they have formed a new partnership, in which one of them has only a nominal interest.—*Floyd v. Storrs*, S. J. C. Mass., Feb. 25, 1887; 10 N. E. Rep. 743.

118. EQUITY—Specific Performance — Injunction — Judgment.—An injunction to restrain the enforcement of a judgment for possession of certain premises, where the bill also asks for the specific performance of a parol agreement for a lease, will be dissolved, where it appears that the jury found against the complainant in an important part of the transaction, as alleged in his bill.—*Campbell v. Runyon*, N. J. Ct. Ch., Feb. 17, 1887; 8 Atl. Rep. 298.

119. ESTATES—Of Decedents—Heirs — Administrators.—The heirs or next of kin of a deceased person, who leaves a widow and owed debts, cannot divide the personal estate among themselves without the services of an administrator.—*Bangard v. Miller*, S. C. Penn., Feb. 14, 1887; 8 Atl. Rep. 209.

120. ESTOPPEL — Deed — Life Estate.— When a widow conveys her life estate in land, and warrants such an estate, she is not estopped from claiming another interest accruing to her.—*Holman v. Dukes*, S. C. Ind., Feb. 26, 1887; 10 N. E. Rep. 629.

121. ESTOPPEL—Fraud and Forgery by Officer of Bank.—A bank is estopped by the act of its officer who, being authorized to release a mortgage, altered the record by inserting the word "assign," and thereupon assigned the mortgage to a purchaser in good faith.—*Holden v. Whiting*, U. S. C. C. (Mass.), Feb. 18, 1887; 29 Fed. Rep. 881.

122. ESTOPPEL—Judgment—Satisfaction.—Where land is conveyed by an administrator on account of several judgments, the judgment creditor, in suing for an interest in such land, is not estopped by the fact that a deed of other land was made to him in full satisfaction of his judgment, of which last deed he never had any information.—*Stephenson v. Martin*, S. C. Tex., Nov. 16, 1886; 3 S. W. Rep. 89.

123. ESTOPPEL—Mistake—Bill to Correct—Damage Therefor.—A suit against an attorney for damages in drawing a lease incorrectly, is not barred by a prior bill in equity to correct the mistake, where his liability therefor was not raised.—*Cummings v. Barron*, Md. Ct. App., Feb. 4, 1887; 8 Atl. Rep. 357.

124. EVIDENCE—Copy — Original.—— A copy of a copy is not admissible, unless it is proved that the original is lost, and a copy thereof cannot be obtained.—*Mercier v. Harnan*, S. C. La., Jan. 3, 1887; 1 South. Rep. 410.

125. EVIDENCE — Counterclaim — Damages. ——In an action for rent and for repairs, evidence of injury to defendant's goods from leakage from above is admissible to prove a counterclaim, in the absence of evidence that the tenant above is responsible therefor.—*Colclough v Niland*, S. C. Wis., March 1, 1887; 32 N. W. Rep. 119.

126. EVIDENCE — Experts. —— Where one party is permitted to show the reputation of a surgeon, and then the witnesses are allowed to give their opinion of the facts on the assumption that the diagnosis of that surgeon is correct, the other party may show by the same witnesses his own skilfulness and reputation.—*Vanhover v. Berghoff*, S. C. Mo., Jan. 31, 1887; 3 S. W. Rep. 72.

127. EVIDENCE — Handwriting — Comparison of Documents.——Writings may be introduced and compared with others to prove they were written by the same person. It is not necessary that one set are clearly proven to have been written by the party alleged, as this uncertainty only affects the weight of the evidence.—*Bell v. Brewster*, S. C. Ohio, March 1, 1887; 10 N. E. Rep. 679.

128. EVIDENCE — Parol — Deed. —— Where in the pleadings the execution of the deed is admitted, parol evidence of a contemporaneous verbal contract limiting its effect is not admissible, in an action of ejectment.—*Campe v. Renandine*, S. C. Miss., Feb. 28, 1887; 1 South. Rep. 498.

129. EVIDENCE — Witness — Party Offering. ——A party is not bound by all the statements of his witnesses, if adverse, even though no other witness is called to contradict him.—*Becker v. Koch*, N. Y. Ct. App., March 1, 1887; 10 N. E. Rep. 701.

130. EVIDENCE—Written Contract—Parol.——Parol evidence is inadmissible to contradict a written contract, except in a case of fraud, mistake, or accident.—*Bowman v. Tagg*, S. C. Pa., Feb. 14, 1887; 8 Atl. Rep. 384.

131. EXCEPTIONS.——The supreme court will not consider an exception, not included in the bill of exceptions, brought up to the supreme court.—*Berry v. County of Alturas*, S. C. Idaho, Feb. 21, 1887; 13 Pac. Rep. 233.

132. EXCEPTIONS.——A bill of exceptions, not seasonably filed, will be stricken from the record.—*Jennison v. Boos*, S. C. New Mex., Jan. 14, 1887; 13 Pac. Rep. 230.

133. EXECUTION — Levy — Bond — Release.——A claimant of goods levied on under an execution, who releases the execution creditor, also releases the sheriff, to whom the execution creditor had given a bond of indemnity.—*Atwood v. Brown*, S. C. Iowa, March 1, 1887; 32 N. W. Rep. 108.

134. EXECUTION— Sale — Fraud.——Mere inadequacy of price will not be sufficient to set aside an execution sale, but may be so, if accompanied by irregularities.—*Fletcher v. McGill*, S. C. Ind., March 8, 1887; 10 N. E. Rep. 651.

135. EXECUTION— Sale — Notice—Title.——A purchaser at an execution sale acquires precedence over an unrecorded deed, if the executor creditor had no notice thereof when the judgment was rendered.—*Doyle v. Wade*, S. C. Fla., Feb. 28, 1887; 1 S. Rep. 516.

136. EXECUTION—Sale—Purchase — Fraud — Possession—Reconveyance.——In the absence of evidence of an agreement between the purchaser at an execution sale and the debtor to defraud the latter's creditors, it is immaterial that at such sale he bought the property at less than its value, and bought up several judgments. The continued possession of the land by the debtor does not prove that the sale was collusive, nor is an agreement to let the debtor have the land upon reimbursing the purchaser conclusive evidence of fraud.—*Mead v. Conroe*, S. C. Penn., Oct. 4, 1886; 8 Atl. Rep. 374.

137. EXECUTORS—Allowance after Time Limited—Evidence.——A claim made against an estate after the expiration of the one year limit will be made if the delay was caused by continuances of an action at law. When the account books of a creditor are admissible in evidence against the estate of a decedent.—*Orcutt v. Hanson*, S. C. Iowa, March 3, 1887; 31 N. W. Rep. 950.

138. EXECUTORS— Arbitration Before Administration.——An arbitration of a claim agreed upon by the heirs of an estate before the administrator is appointed, is not binding on the estate.—*Stahl v. Brown*, S. C. Iowa, March 5, 1887; 32 N. W. Rep. 105.

139. EXECUTORS—Claims— Heirs and Devisees.—— Under New Jersey law, though the executor has sufficient personal property, it is not necessary to present a claim to him, but the heirs and devisees may be sued thereon instead.—*Stone v. Todd*, S. C. N. J., Feb. 17, 1887; 8 Atl. Rep. 300.

140. EXECUTORS—De Bonis Non — Resignation — Jurisdiction.——A probate court has jurisdiction over an administrator, whose resignation has been accepted, and can order him to pay over all assets for which he is liable, though he has converted them to his own use, and such decree is conclusive on him and his sureties, unless appealed from or reversed.—*Shagle v. Entrekin*, S. C. Ohio, Jan. 25, 1887; 10 N. E. Rep. 675.

141. EXECUTORS—Debts—Limitations — Creditors. ——Where a testator empowers his executors to sell property, pay debts, etc., the estate, under Mississippi law, is taken out of the usual law, and no statute of limitations will run against the creditors thereof, except such as would bar a trust.—*Hill v. Abbay*, S. C. Miss., Feb. 20, 1887; 1 South. Rep. 484.

142. EXECUTORS—Orphan's Court— Jurisdiction — Sale to Pay Debts.——Under the Pennsylvania law, the orphan's court of the domicile of the deceased has alone the power to order the sale of the deceased's real estate, and then only to pay debts not recorded. A sale under a mortgage, authorized by the court of another county to pay debts, is void.—*Spencer v. Jennings*, S. C. Penn., Jan. 3, 1887; 8 Atl. Rep. 2.

143. EXECUTORS—Sale of Land — Appeal by one Defendant. —— Where only one defendant appeals from an order obtained by him, when judgment was rendered against him and other defendants, to set aside a probate sale of land, his appeal is good, though the other defendants, who have different portions of the land, do not appeal. A motion to dismiss an appeal for irregularity in, or want of bond, must be made at the term to which it was returnable, and within three judicial days after the record is filed.—*Webb v. Keller*, S. C. La., Jan. 3, 1887; 1 South. Rep. 423.

144. EXECUTOR — Universal Legatee — Renouncing

Trust—Second Marriage—Children of First Marriage.——An executor who has qualified, and is also universal legatee, cannot, by his own act, cease to be executor. When a universal legatee marries again, having children by the first marriage, he or she retains only the usufruct of the property, and the children become the owners thereof.—*Webb v. Keller*, S. C. La., Jan. 3, 1887; 1 South. Rep. 423.

145. FENCES—Division—Equity—New Jersey Law.——A bill in equity to compel a railroad company to make a fence along its track is not maintainable, under the New Jersey law, since that law provides the proper proceedings.—*Vanderveer v. New Jersey, etc. Co.*, N. J. Ct. Ch., Feb. 17, 1887; 8 Atl. Rep. 99.

146. FRAUDS—Statute of—Easement by Parol—Married Woman.——A parol contract will convey a private right of way, when immediate possession is taken, and is constantly used thereafter. A grantee of the servient estate cannot claim that the easement is void, because his grantor, who authorized it, was a married woman.—*Robinson v. Thrailkill*, S. C. Ind., March 11, 1887; 10 N. E. Rep. 647.

147. FRAUDULENT CONVEYANCE — Chattel Mortgage—Subsequent Mortgagee—Mortgagee for Value—Instruction.——A mortgage of goods, of which, by its terms, the mortgagor remains in possession, is not necessarily fraudulent. If such a mortgage is otherwise valid, a subsequent mortgagee is merely a creditor at large, who cannot attack the prior mortgage. Michigan statute (2 How. Stat Mich. § 6193) construed. A mortgage, securing past indebtedness, does not constitute the mortgagee a "mortgagee for value." The court can, in proper cases, give a peremptory instruction, although by the statute the question of fraud or good faith is made a question for the jury.—*People's, etc. Bank v. Bates*, U. S. S. C., March 7, 1887; 7 S. C. Rep. 679.

148. FRAUDULENT CONVEYANCE. — Instructions.—In an action to declare a sale fraudulent, it is error for the court to instruct that the "only" question for the jury to determine is whether the defendant had fraudulently transferred his property, and to instruct the jury that certain circumstances indicate a fraudulent intent on his part.—*Ladnier v. Ladnier*, S. C. Miss., Feb. 28, 1887; 1 South. Rep. 492.

149. GARNISHMENT — Execution — Service on Defendants.—Where, on execution against two, a third party was garnished and one defendant notified, and, on a trial, the garnishee was discharged, but on appeal this decision was reversed: *Held*, that the other defendant could not then move to dismiss the garnishment proceedings, he being advised of the proceedings.—*Winner v. Hoyt*, S. C. Wis., March 1, 1887; 32 N. W. Rep. 128.

150. GOOD-WILL— Sale of Business.—— In Massachusetts, the sale of the stock in a store, and the goodwill of the trade and the advantages connected with such place of business, does not import an agreement by the vendor not to engage in a similar business in some other place at a subsequent time.—*Chaney v. Hoxie*, S. J. C. Mass., Feb. 24, 1887; 10 N. E. Rep. 713.

151. HABEAS CORPUS—Return —Amendment—Discharge.——Upon a return to a writ of *habeas corpus*, the judge may require the return of any order or document, which he may have reason to think exists, and may amend the return at any time prior to his decision. The defendant should not be discharged because he has not been tried the second term after issue joined, unless he has applied to the trial court for his discharge, and the refusal thereof was arbitrary and groundless.—*Patterson v. State*, S. C. N. J., March 8, 1887; 8 Atl. Rep. 305.

152. HUSBAND AND WIFE—Her Land — Husband Renting.——A creditor, furnishing supplies to a man engaged in planting, can hold the wife therefor, if she owned the land, even though he was unaware of it, unless the lease from wife to husband was recorded, but such liability is confined to such articles as were used in the business.—*Porter v. Staten*, S. C. Miss., Feb. 21, 1887; 1 South. Rep. 487.

153. HUSBAND AND WIFE—Removal of Disabilities —Exercise of Powers.——Under the Alabama law, providing for the removal of a wife's disabilities, she may exercise the powers given to her severally at her own discretion.—*Robinson v. Walker*, S. C. Ala., Feb. 14, 1887; 1 South. Rep. 347.

154. IMPEACHMENT— Judge — Facts.——This case, which is of original jurisdiction, is mainly decided on questions of fact.—*State v. Lazarus*, S. C. La., Feb. 7, 1887; 1 South. Rep. 361.

155. INJUNCTION — Monopoly — Corporation. —— When a corporation claims a monopoly it must clearly show, that the law or its charter confers the exclusive privilege upon it.—*Appeal of City of Chester*, S. C. Pa., Feb. 21, 1887; 8 Atl. Rep. 400.

156. INN-KEEPER — Guest — Liability.——One who puts up his horse at an inn is so far a guest that the inn-keeper is liable as an insurer against everything except inevitable accident, the public enemy and the acts of the owner.—*Russell v. Fagan*, Superior Court Del., Nov. 29, 1886; 8 Atl. Rep. 258.

157. INSOLVENCY — County Court— Jurisdiction of. ——The exclusive jurisdiction of county courts in administering the estates of insolvents, does not depend upon the validity of the assignment—*Farwell v. Crandall*, S. C. Ill., Jan. 25, 1887; 10 N. E. Rep. 672.

158. INSURANCE—Accident—Suicide—Policy—Construction—Insanity.——The death of a person, who, while insane, hangs himself, is not a death "caused wholly or in part by bodily infirmities or disease, or by suicide or self-inflicted injuries," within the meaning of an exception in an accident policy of insurance. The construction of a policy of insurance is controlled by the legal effect of the language used, and not by a statement in the application of the "understanding" of the insured of what the insurance will extend to.—*Accident, etc. Co. v. Crandall*, U. S. S. C., March 7, 1887; 7 S. C. Rep. 685.

159. INSURANCE—Fire—Defense of Arson—Amount of Proof.——A defense to a fire insurance policy, that the plaintiff purposely burned up the property, is established by a preponderance of the evidence.—*Continental, etc. Co. v. Jachnichen*, S. C. Ind., March 9, 1887; 10 N. E. Rep. 636.

160. INSURANCE—Life Insurance — When Answers are not Warranties.——An applicant for life insurance in answering the question: "Have you been rejected by the medical examiner of any lodge or society?" does not warrant his answer to be strictly true, he answers according to his knowledge or reasonable belief.—*Semm v. Supreme Lodge, etc.*, U. S. C. C. (N. Y.), Feb. 14, 1887; 29 Fed. Rep. 895.

161. INTOXICATING LIQUORS — Indictment — Evidence.——Under the Alabama law, about sale of intoxicating liquors, one who merely acts as assisting friend of another, and is not in any way interested in the trans-

action, is not liable.—*Morgan v. State*, S. C. Ala., Feb. 21, 1887; 1 South. Rep. 472.

162. INTOXICATING LIQUORS—Licenses—Exceptions—Certiorari——Errors of law by municipal authorities, in the question of granting licenses for the sale of intoxicating liquors, may be remedied, in Mississippi, by *certiorari*, but the decisions on matters of fact are conclusive.—*Jane v. Alley*, S. C. Miss., Feb. 28, 1887; 1 South. Rep. 497.

163. INTOXICATING LIQUORS—Local Option—Constitution—Elections.——The local option law comes under the police power and is constitutional, but in such elections all the requirements of the law must be strictly complied with.—*Ex parte, Kennedy*, Tex. Ct. App., Feb. 9, 1887; 3 S. W. Rep. 114.

164. INJUNCTION—Municipal Corporation—Signing Ordinance.——An injunction will not lie to restrain the mayor of a city from signing an ordinance to repeal a previous ordinance and a contract under it.—*N. O. Elevated R. Co. v. Mayor of New Orleans*, S. C. La., Feb. 14, 1887; 1 South. Rep. 434.

165. JUDGMENTS—Non-resident—No personal service.——A judgment in *personan* cannot be rendered against a non-resident unless he is personally served.—*Elliott v. McCormick*, S. J. C. Mass., Feb. 24, 1887; 10 N. E. Rep. 705.

166. JUDGMENT — Payment — Surety — Lien. —— Ordinarily a judgment lien is extinguished by the payment of the debt, yet equity will keep it alive for the benefit of the surety, who makes the payment.—*German Am. Sav. Bk. v. Fritz*, S. C. Wis., March 1, 1887; 32 N. W. Rep. 123.

167. JUDGMENT—Sales Under—Reversal.——Where land is sold under a judgment, which is subsequently reversed as being erroneous, the sale is valid, even though the plaintiff was the purchaser.—*Stewart v. Hoskins*, Ky. Ct. App., Feb. 12, 1887; 3 S. W. Rep. 124.

168. JURISDICTION — Amount — Agreement — Supreme Court. ——Parties by consent cannot confer jurisdiction on the supreme court, where the fund to be distributed, the claim of the creditor seeking it, and the claims of his opponents, are respectively less than $2,000.—*Heirs of Gee v. Thompson*, S. C. La., March 7, 1887; 1 South. Rep. 537.

169. JURISDICTION—Supreme Court—Amount.—— The appellant must show that over $2,000 are involved to give the Supreme Court jurisdiction in all cases not excepted by the constitution.—*Hite v. Himel*, S. C. La., Feb. 14, 1887; 1 South. Rep. 415.

170. JURISDICTION — Supreme Court — Amount—Taxes.——The Supreme Court has no jurisdiction over a tax suit not involving over $2,000, and when the question involved is only one of procedure.—*City of New Orleans v. Schoenhausen*, S. C. La., Feb. 14, 1887; 1 South. Rep. 414.

171. JUROR—Disqualification—Witness—Employee. ——A person is not disqualified as a juror in the case, because he has been subpœnaed as a witness therein by one of the parties, in whose employ he was a year ago.—*East L., etc. R. Co. v. Brinker*, S. C. Tex., Nov. 16, 1886; 3 S. W. Rep. 99.

172. JURY — Demand For.——In Tennessee, under the act of 1875 (M. & V. Code, § 3602), a party who desires a trial by jury must demand it in his first pleading and tender an issue triable by jury. This rule applies alike to pleadings at common law and under the code.—*Gleaves v. Davidson*, S. C. Tenn., 1887; 3 S. W. Rep. 348.

173. JURY—Special Sheriff.——In Kentucky, upon affidavit in a criminal case that the sheriff will not summon impartial jurors, a special sheriff may be appointed by the court for that purpose, under Crim. Code Ky. § 193. The appointment may be made upon the affidavit of either party.—*Johns v. Commonwealth*, Ky. Ct. App., March 1, 1887; 3 S. W. Rep. 369.

174. JUSTICES OF THE PEACE—Jurisdiction.——In Arkansas, a justice has no jurisdiction over an action to recover a statutory penalty.—*Baltimore, etc. Tel. Co. v. Lovejoy*, S. C. Ark., Feb. 12, 1887; 3 S. W. Rep. 183.

175. LACHES — Distributees — Estoppel. ——Where the distributee of an estate, having received his share, delays for nine years to make any inquiry or complaint of the accuracy of the settlement, he is estopped by the delay.—*Teipel v. Vander Weier*, S. C. Minn., Feb. 28, 1887; 31 N. W. Rep. 934.

176. LANDLORD AND TENANT—Lease—Sale of Property.——The seizure and sale of one-third of the land leased, by proceedings against the landlord, does not *ipso facto* dissolve the lease.—*Lewis v. Klotz*, S. C. La., March 7, 1887; 1 South. Rep. 539.

177. LEGACIES—Succession Tax.——The New York law, imposing a succession tax upon legacies to persons not related to the testator, is constitutional.—*In re Will of McPherson*, N. Y. Ct. App., Feb. 1, 1887; 10 N. E. Rep. 685.

178. LIMITATIONS — Account Stated.——In Mississippi, an accountstated in 1879 is barred in three years.—*Newman v. Foster*, S. C. Miss., Feb. 28, 1887; 1 South. Rep. 505.

179. LIMITATIONS — Note — Mortgage —Negotiable Paper — Presumption—Foreign Executor.——In Nebraska, ten years is allowed by the statute of limitations for the foreclosure of a mortgage, and the holder, or purchaser for value before maturity, is not deprived of his remedy, because the notes themselves have been barred by the statute. One in possession of negotiable paper, duly indorsed, is presumed to be a purchaser for value before maturity. What is sufficient evidence of the authority of an executor appointed in another State.—*Cheney v. Stone*, U. S. C. C. (Neb.), 1886; 29 Fed. Rep. 885.

180. LIMITATIONS — Partnership Account—Surviving Partner.——In a suit on a partnership account, a claim for services subsequently rendered to the surviving partner does not take the suit out of the statute of limitations.—*Eldridge v. Smith*, S. J. C. Mass., Feb. 24, 1887; 10 N. E. Rep. 717.

181. MALICIOUS PROSECUTION—Pleading—Weight of Evidence—New Trial.——A declaration for malicious prosecution must allege want of probable cause. Where it appears that the trial judge thought the verdict was against the weight of the evidence, the case will be reversed, though the judge did not grant a new trial.—*Turner v. Turner*, S. C. Tenn., Feb. 5, 1887; 3 S. W. Rep. 121.

182. MASTER AND SERVANT. —— The driver of a street car is still the servant of the company after he has surrendered the reins to his successor and was leaving the car. The company is then as responsible for him in respect of his unfitness or gross negligence as at any other time. Pub. Stat. Mass. ch. 112, § 212.—*Commonwealth v. Brockton, etc. Co.*, S. J. C. Mass., Feb. 23, 1887; 10 N. E. Rep. 506.

183. MASTER AND SERVANT — Negligence—Fall of Building—Presumption—Violation of Ordinance.—The falling of a building is *prima facie* evidence of defective construction, and a violation of a city ordinance in the construction thereof is *prima facie* evidence of negligence; but that the building cannot resist an extraordinary storm is not evidence of negligence. If the building falls from having walls of insufficient thickness, the owner is responsible to a carpenter injured thereby, who was working on the roof.—*Giles v. Diamond S. I. Co.*, Superior Ct. Del., Feb. 19, 1887; 8 Atl. Rep. 368.

184. MASTER AND SERVANT—Negligence—Fellow-servants—Instructions.—Where an employee is injured by the fall of a scaffold constructed by his co-employees, and there is no evidence of negligence by the master, an instruction to find for the defendant is proper.—*Crawford v. Stewart*, S. C. Penn., Jan. 3, 1887; 8 Atl. Rep. 5.

185. MORTGAGE — Condition — Satisfaction.—A party, who gave a mortgage conditioned to erect a building worth a certain sum on a piece of property, and subsequently erected two buildings thereon worth together that sum, is entitled to a satisfaction of the mortgage.—*Goldbeck's Appeal*, S. C. Penn., Jan. 17, 1887; 8 Atl. Rep. 29.

186. MORTGAGES — Foreclosures — Sales—Marshaling.—In sales under mortgages with other incumbrances subsequent thereto, the earliest incumbered should be sold last.—*Millsaps v. Bond*, S. C. Miss., Feb. 28, 1887; 1 South. Rep. 506.

187. MISTAKE—Reforming Deed—Evidence.—The evidence in a suit to reform a deed on account of a mistake must establish the allegation to the entire and complete satisfaction of the court.—*Stiles v. Willis*, Md. Ct. App., Feb. 4, 1887; 8 Atl. Rep. 353.

188. MUNICIPAL CORPORATIONS — Assessments — Action.—Tax-payers cannot appeal to the courts to test the correctness of the assessments, unless they have made the proper application to the standing committee on assessments of the municipality.—*Shattuck v. City of New Orleans*, S. C. La., Jan. 3, 1887; 1 South. Rep. 411.

189. MUNICIPAL CORPORATION — Contract—Philadelphia.—No contract or debt is binding on Philadelphia unless authorized by law or ordinance, and an appropriation sufficient to pay the same be previously made.—*Ross v. City of Philadelphia*, S. C. Pa., Feb. 21, 1887; 8 Atl. Rep. 398.

190. MUNICIPAL CORPORATIONS—Lessee — Injunction.—A lessee of lands of the town of Gravesend cannot enjoin the town from selling the land to another, unless he shows an offer on his part to buy or a refusal on their part to sell.—*Furey v. Town of Gravesend*, N. Y. Ct. App., March 1, 1887; 10 N. E. Rep. 698.

191. MUNICIPAL CORPORATIONS — Mandamus — Interest on Bonds.—On application of a holder of a water bond, on which interest is due, a *mandamus* will lie to compel the City of Rahway to levy a tax to meet the deficiency reported to them by the board of water commissioners. The law authorizing water works in that city construed.—*State v. City of Rahway*, S. C. N. J., Feb. 17, 1887; 8 Atl. Rep. 106.

192. MUNICIPAL CORPORATIONS—Monopoly—Tax-payer—City Debt—Injunction—Appeal.—A city corporation cannot create a monopoly. A contract conferring upon a party the *exclusive* right to furnish water to a city for a term of years is a monopoly. A tax-payer may invoke the equity powers of the court to prevent misapplication of city's funds. A city may be restrained by injunction from incurring a debt in excess of amount limited by the charter. A defendant who has not been served with any process whatever is not before the court upon an appeal taken by his co-defendant.—*Davenport v. Klienschmidt*, S. C. Mon., Feb. 2, 1887; 13 Pac. Rep. 249.

193. MUNICIPAL CORPORATIONS — Negligence — Streets—Hearsay.—In an action for injuries from a defective sidewalk, a witness may testify that the street where it occurred had been a public highway by common reputation and tradition for two hundred years.—*Hampson v. Taylor*, S. C. R. I., Jan. 11, 1887; 8 Atl. Rep. 331.

194. MUNICIPAL CORPORATIONS—Street Improvements—Notice—Scire Facias.—Street improvements must be made strictly in accordance with the law, and those interested are entitled to notice and to a hearing previous to the making of the assessments; and one not notified may make all his defenses on the *scire facias* upon the municipal lien.—*Herschberger v. City of Pittsburg*, S. C. Penn., Feb. 7, 1887; 8 Atl. Rep. 381.

195. NEGLIGENCE—Proof Necessary.—Where one, lawfully in a foundry is injured by an iron plate falling on him, without further evidence of negligence on the part of the defendant he must be non-suited.—*McLean v. Burnham*, S. C. Penn., Jan. 17, 1887; 8 Atl. Rep. 25.

196. NOTICE—Inquiry—Sale—Fraud.—A person is not chargeable with notice of a fact, even though reasonable inquiry would have informed him, unless the law casts on him the duty of making such inquiry, which only exists when his knowledge is sufficient to awaken a suspicion on the subject.—*Kyle v. Ward*, S. C. Ala., Jan. 26, 1887; 1 South. Rep. 468.

197. PARENT AND CHILD—Daughter's Debts.—A parent is not bound for the debts contracted by his daughter living with him, unless he authorized her to incur them on his account.—*White v. Mann*, S. C. Ind., Feb. 24, 1887; 10 N. E. Rep. 629.

198. PARTNERSHIP — Construction of.—In construing the terms of a partnership, not only should the original agreement be considered, but also all alterations or constructions thereof, as shown by their books and assented to for many years.—*Southmayd's Appeal*, S. C. Penn., Feb. 7, 1887; 8 Atl. Rep. 72.

199. PARTNERSHIP — Dissolution — Dealings with Others.—Where A writes to B to honor C's orders, and that he and C are partners in the business, A is liable for articles sent two months thereafter, though the partnership had been dissolved, B not being informed thereof.—*St. L. Electric L. Co. v. Marshall*, S. C. Ga., Feb. 1, 1887; 1 S. E. Rep. 430.

200. PATENTS—Infringement.—Letters patent No. 192,225, granted to Burnell for barbed wire fences, held valid and infringed by defendant.—*Iowa, etc. Co. v. Southern, etc. Co.*, U. S. C. C. (Mo.), Feb. 7, 1887; 29 Fed. Rep. 863.

201. PATENTS—Infringement—Accounting.—In an accounting of profits in a case of infringement of patents, the master may use on a second accounting the record of the first. The rule prescribed for accounting for profits.—*Reed v. Lawrence*, U. S. C. C. (Mich.), October Term, 1886; 29 Fed. Rep. 915.

202. PERJURY—Jurisdiction.—The offense of per-

jury cannot be committed by false swearing in a case tried by a tribunal which has no jurisdiction of the offense it assumes to try.—*State v. Jenkins*, S. C. S. Car., Feb. 16, 1887; 1 S. E. Rep. 437.

203. PLEADINGS—Demurrer — Liberality.——A demurrer to several paragraphs of a petition, stating jointly that each does not contain facts sufficient, etc., calls in question the sufficiency of each.—*Ind., etc. R. Co. v. Dailey*, S. C. Ind., March 8, 1887; 10 N. E. Rep. 631.

204. PLEADINGS — Specific Allegations — Quieting Title—Defendant's Interest.——A specific allegation of title controls a general allegation. In an action to quiet title it is sufficient to allege that defendant claims adversely to plaintiff.—*McPheeters v. Wright*, S. C. Ind., March 9, 1887; 10 N. E. Rep. 634.

205. POWERS—Attorney—Execution.——Where the attorney is authorized to grant in the name and instead of his principal, the deed must be executed in the name of the principal, even though the warrant of attorney is recited therein.—*Bassett v. Hauck*, S. C. Penn., Jan. 3, 1887; 8 Atl. Rep. 18.

206. PRACTICE—Address by Court to Jury—New Trial.——After the case was given to the jury, the court read them an address, advising them to compromise among themselves as to their views of the case, and yield somewhat to the others, especially when the others were in a majority: *Held*, to be error and a new trial should be granted.—*Whitelaw v. Whitelaw*, S. C. Va. App., March 17, 1887; 1 S. E. Rep. 407.

207. PRACTICE—Appeal—Bill of Exceptions— Entry Nunc Pro Tunc.——The order allowing time after adjournment for preparing the bill of exceptions must be entered in the minutes of the court and signed by the judge before the adjournment of the court. When such an order was made, the appellate court will allow a reasonable time to have such order entered *nunc pro tunc* and inserted in the transcript.—*Temple v. Fla., L. & I. Co.*, S. C. Fla., Jan. 24, 1887; 1 South. Rep. 338.

208. PRACTICE—Instructions — Errors Cured.——Where the charge as a whole is correct, an isolated part of it, which alone might be considered erroneous, will not vitiate it.—*Young v. Harris*, S. C. Dak., Feb. 16, 1887; 32 N. W. Rep. 97.

209. PRACTICE—New Trial— Insufficient Evidence.——When the evidence is insufficient to sustain the verdict against the defendant, he should move for a new trial, and not in arrest, under Iowa Code.—*Kirk v. Litterst*, S. C. Iowa, March 5, 1887; 32 N. W. Rep. 106.

210. PRACTICE—Orders in Chambers—Amendment.——Under the South Carolina law, a judge in chambers upon notice to the defendant can grant the plaintiff leave, on motion, to amend his complaint.—*Ellen v. Ellen*, S. C. S. Car., Feb. 14, 1887; 1 S. E. Rep. 413.

211. PRACTICE—Removal of Cause—Waiver.——On the last day of the return term, defendant filed a petition and bond for the removal of the cause to the United States Court, but also filed a motion that it should be without prejudice to motions then pending, which at a subsequent time were passed on. At the fourth term heretafter he objected to its trial, when it was called. *Held*, that he had waived his right to a removal.—*Arny v. Manning*, S. J. C. Mass., Feb. 27, 1887; 10 N. E. Rep. 787.

212. PRACTICE—Service of Process—Agent — Territorial Judgments.——The service of process on a defendant by serving a person, a member of a firm which has been appointed its agent for that purpose, in accordance with the law of the country and which appointment had not been revoked, is a good service. The jurisdiction of a court in one of the United States territories may be impeached, notwithstanding the recitals in the record.—*Gibson v. Man. F. & M. I. Co.*, S. J. C. Mass., Feb. 25, 1887; 10 N. E. Rep. 729.

213. PRINCIPAL AND SURETY—Lease.——Where one agrees in writing to be surety for the performance by another of the conditions in a lease, and in case of default by the other to be liable therefor, he becomes a surety.—*Scott v. Swain*, S. C. Penn., Jan. 17, 1887; 8 Atl. Rep. 24.

214. PROCESS — Publication — Breach of Marriage Promise—Judgment — Default — Damages — Statute.——Under the law of Kansas, service by publication is sufficient if it is shown by affidavit that defendant, a resident of the State, had left it to avoid personal service. A demand for damages for breach of marriage promise is a demand for "the recovery of money only," and under § 128, of the civil code of Kansas, upon a judgment by default in such a case, judgment will be rendered for the amount claimed.—*Cole v. Haeburg*, S. C. Kan., March 4, 1887; 13 Pac. Rep. 275.

215. PROMISSORY NOTE—Consideration—Burden of Proof——Where defendant shows that the money was given him by his father and the note was made only to used in case his father's estate could not otherwise pay its debt, the burden of proof is thrown on the administrator of the father, the plaintiff.—*Perley v. Perley*, S. J. C. Mass., Feb. 25, 1887; 10 N. E. Rep. 726.

216. RAILROADS—Aid Tax—Agreement — Mandate.——Where the party to receive the proceeds of a tax agreed to receive a part of the tax in full of the demand, if it was paid within a certain time, a mandate will not lie to compel the collection of the balance.—*Bd. of Coms. of Huntington Co. v. State*, S. C. Ind., Feb. 25, 1887; 10 N. E. Rep. 625.

217. RAILROAD — Negligence.——The ordinance of the city of St. Louis requiring the bells of locomotives in motion within the city to be continuously rung, but this rule does not apply to the moving of engines and cars in the car-yard in which there is no street crossing.—*Rafferty v. Missouri, etc. Co.*, S. C. Mo., Feb. 14, 1887; 3 S. W. Rep. 393.

218. RAILROADS — Sales — Prior Contracts.——The lessees of the purchasers of a railroad at foreclosure sale are not bound by the stipulations of a contract between the company and the county.—*People v. Louisville, etc. Co.*, S. C. Ill., Jan. 25, 1887; 10 N. E. Rep. 657.

219. REWARD—Lunatic—Public Officer.——An overseer of a county asylum, to which an escaped lunatic has been transferred on his arrest, has no right to a reward offered for the return of the lunatic to the asylum from which he escaped.—*King v. Devlin*, S. C. Wis., March 1, 1887; 32 N. W. Rep. 121.

220. SALE—Fraud—Rescission.—— In order that a sale of goods may be rescinded for fraud by the vendor against the vendee, or those buying with knowledge, the vendee must have been insolvent, or have had the intention not to pay, or no reasonable expectation of being able to pay, and must have fraudulently concealed or misrepresented those facts.—*LeGrand v. Eufaula Nat. Bank*, S. C. Ala., Jan. 25, 1887; 1 South. Rep. 460.

221. SALE—Fraudulent Representations—Bona Fide Purchaser.——A vendor cannot claim to have been

misled by written representations of the vendee, which he saw first after the sale was made. The title of a purchaser for value from a fraudulent vendee cannot be attacked, unless prior to his purchase a knowledge of the fraud is proved against him.—*Robinson v. Levi*, S. C. Ala., Feb. 22, 1887; 1 South. Rep. 554.

222. SALE — Option to Return—Title. —— Where vendors agree to take back part of goods sold at a certain time, if vendee cannot dispose of them, such sale vests the title in the vendee, with an option of return. The contract is not changed by an offer of return prior to the time till the offer is accepted.—*Robinson v. Fairbanks*, S. C. Ala., Feb. 21, 1887; 1 South. Rep. 552.

223. SALE—Warranty.——An action may be maintained by the purchaser of chattels for false representations or a breach of warranty, even if he paid the price after discovering the breach of warranty or the deceit.—*Nauman v. Overlee*, S. C. Mo., Feb. 14, 1887; 3 S. W. Rep. 380.

224. SAVINGS BANK — Liquidation — Surplus. —— When a savings institution, wherein the depositors are to receive their ratable proportion of the profits, goes into voluntary liquidation and has a surplus, such surplus shall be divided among those persons who were still depositors when it went into liquidation. —*Morristown I. for S. v. Roberts*, N. J. Ct. Ch., March 5, 1887; 8 Atl. Rep. 315.

225. SCHOOLS AND SCHOOL DISTRICTS — Records of Meetings—Appeal.——Records of school meetings, which merely state that they were held according to notice, do not comply with the Rhode Island law, but it is not fatal, if the essentials required are admitted. A defendant cannot object, in a suit to collect the tax, that it does not appear that it was raised for the support of the public schools, if he did not appeal.—*Seabury v. Howland*, S. C. R. I., Feb. 7, 1887; 8 Atl. Rep. 341.

226. SET-OFF—Appeal—Judgment.——When a defendant has failed in the trial court to claim a set-off, he cannot be permitted upon appeal to do so.—*Bindley's Appeal*, S. C. Penn., Jan. 3, 1887; 8 Atl. Rep. 1.

227. SLANDER — Evidence in Court.—— The Mississippi law, making persons liable for use of insulting words, does not apply to the evidence given in court by a witness.—*Verner v. Verner*, S. C. Miss., Feb. 14, 1887; 1 South. Rep. 479.

228. STREETS—Opening of —Constitutional Law — Damages—Appeal.— The act (P. L. 1886, p. 133) is constitutional. Under that act the owners of the majority of frontage on the proposed street can stop its opening. An appeal from an award of damages, within the time allowed by the local law, is not a waiver of objections for illegality.—*State v. Township of East Orange*, S. C. N. J., Feb. 17, 1887; 8 Atl. Rep. 107.

229. TAXATION—Gross Sum by Law—Exemption—Railroad—Other Property.——Under the act, whereby a railroad was to pay a gross sum in lieu of all taxes due under any and all laws of the State, county and State taxes are discharged by such payment; but this does not apply to real estate owned by the company not a part of or connected with the road-bed or right of way.—*Philadelphia, etc. R. Co. v. Neary*, Del. Ct. Ch., Dec., 1886; 8 Atl. Rep. 363.

230. TAXATION — Listers — Double Assessments — Lists not Signed.——The law requiring listers to assess property not returned by the owners, and to double it, is constitutional. If the listers' lists are not signed by them, they are void, as against one not in the list, though an act of the legislature tried to cure it; and the quadrennial list, not signed till September, is void, under Vermont laws.—*Bartlett v. Wilson*, S. C. Vt., March 14, 1887; 8 Atl. Rep. 321.

231. TAXATION — Omitted Property — Witness.—— The board of equalization, in Indiana, has power to examine witnesses to determine if a tax-payer has omitted any property from his tax-lists.—*State v. Wood*, S. C. Ind., March 10, 1887; 10 N. E. Rep. 639.

232. TELEPHONE COMPANIES—Poles, Erection of—Cities—Injunction.——In New Jersey, telephone companies cannot erect poles in cities until they obtain permission from the city authorities, who will not be restrained from removing such poles, when the legality of such erection is unsettled.—*New York, etc. Tel. Co. v. Township of East Orange*, N. J. Ct. Ch., Feb. 24, 1887; 8 Atl. Rep. 289.

233. TOWNSHIPS—Division—Property.—— Where a township is divided into two, in the absence of any law, each is entitled to the public property in its domain, and to an equitable distribution of its funds, as they respectively contributed to them. — *Towle v. Brown*, S. C. Ind., March 8, 1887; 10 N. E. Rep. 626.

234. TRADE-MARK — Name — Assignment. —— The trade-mark, "A M. Hoxie's Mineral Soap," is assignable, as importing that the soap is made by Hoxie's formula.—*Hoxie v. Chaney*, S. J. C. Mass., Feb. 24, 1887; 10 N. E. Rep. 713.

235. USURY—Promissory Note—Appeal—Witness.— A note given for balance due on notes that were usurious, is itself tainted with usury; but a note given for money borrowed to pay a usurious note is not usurious. Upon appeal, a verdict will not be disturbed if the evidence is really conflicting. The finding of a jury as to the credibility of a witness is conclusive.—*Cottrell v. Southwick*, S. C. Iowa, March 4, 1887; 32 N. W. Rep. 22.

236. USURY —Void Deed — Evasion.—— A deed to property, accompanied by a bond of the grantee to reconvey on payment of the debt, and a sum, called rent, but which is evidently usurious interest, is void, under Georgia law.—*Morrison v. Markham*, S. C. Ga., Jan. 18, 1887; 1 S. E. Rep. 425.

237. VENDOR'S LIEN —Assignments — Priority.—— A case involving questions of priority, relative to notes against real estate with various assignments thereof.—*Flournoy v. Harper*, S. C. Ala., Jan. 24, 1887; 1 South. Rep. 545.

238. VENDOR AND VENDEE—Several Purchasers — Payment, Presumption of.——When a deed is made jointly to several, it will be presumed that each paid his proportion of the purchase money, in the absence of proof to the contrary.—*Nims v. Nims*, S. C. Fla., Feb. 16, 1887; 1 South. Rep. 527.

239. WAYS—Deed—Injunction.——A conveyed land to B, with the privilege of an alley to a named street. A claimed the wrong street was, by mistake, inserted in the deed, but constructed the proper alley, which he subsequently sold to C, who built thereon. *Held*, that A and C were properly enjoined, at suit of B, from encroaching on that alley.—*Appeal of Snyder*, S. C. Penn., Jan. 17, 1887; 8 Atl. Rep. 26.

240. WAYS—Highways — Amendment of Commissioner's Report—Appeal—Waiver. —— Where the report of a commissioner to the county court about a road is excepted to by remonstrants, the court may

permit it to be amended, and then approve it. If remonstrants file exceptions to the award of damages, and demand a jury, and if, upon appeal to the circuit court, there is a trial anew, and they do not then insist on their exceptions, they can have no advantage from either upon appeal from the circuit court.—*Long v. Talley*, S. C. Mo., Feb. 14, 1887; 3 S. W. Rep. 389.

241. WAYS——Private—Obstructions, Removal of—Cities—Ordinary of a County.——The county ordinary has jurisdiction of a proceeding to remove an obstruction from a private way across land which was formerly part of a city common, but was then private property.—*Duggan v. Cox*, S. C. Ga., Feb. 1, 1887; 1 S. E. Rep. 428.

242. WILLS —Construction — Estate for Life.——In this case, a will is construed imposing an incumbrance on a life-estate.—*Fleming v. Kelly*, S. C. App. Va., March 10, 1887; 1 S. E. Rep. 401.

243. WILLS—Life-estate—Children.——Where testator devises his estate to his daughters' nomination, and that at their death each daughter's share shall go to her children, the daughters take only a life-estate.—*Affolter v. May*, S. C. Penn., Jan. 3, 1887; 8 Atl. Rep. 20.

244. WILLS —Life-estate— Contingent Remainder—Devise.——A devise of land to A for life with remainder to his children and in default thereof to B, gives a contingent remainder, which, under Rhode Island law, is descendible and devisable.—*Loring v. Arnold*, S. C. R. I., Jan. 6, 1887; 8 Atl. Rep. 335.

245. WILL—Parol Evidence —Ambiguity—Religions Societies—Statute.——A testator having bequeathed his residuary estate to the "Board of Foreign Missions," and the "Board of Home Missions," parol proof is admissible to show that he meant the "Boards" of the Presbyterian Church, that he was an elder of that church, deeply interested in its affairs, and not at all in any other boards. The statute of Illinois (Act of April 18, 1872) limiting the lands of any religious body to ten acres applies only to lands held for purposes of worship, and not to those held by benevolent or missionary societies.—*Gilmer v. Stone*, U. S. S. C., March 7, 1887; 7 S. C. Rep. 689.

246. WITNESS—Accused as Witness—Impeachment. ——When a defendant testifies in a criminal case in his own behalf, he opens for examination his character for veracity, but his general moral character cannot be assailed.—*State v. Robertson*, S. C. S. Car., Feb. 16, 1887; 1 S. E. Rep. 443.

247. WILL—Power to Mortgage—Trustee.——Where a testator bequeathes some personal property and some real estate to his executors, to use the same for the benefit of his whole estate, with power to mortgage the real estate, under the New York law the trust to mortgage the real estate is invalid, and the trustees take no title to such real estate.—*Weeks v. Cornwell*, N. Y. Ct. App., Feb. 1, 1887; 10 N. E. Rep. 431.

248. WITNESS — Powers of United States Circuit Court.——A circuit court of the United States may issue a subpœna, requiring a resident of the district to appear before an examiner or a master appointed in another circuit who is acting in that district.—*In re Steward*, U. S. C. C. (N. Y.), Feb. 11, 1887; 29 Fed. Rep. 813.

249. WITNESS — Privileged Communication. —— A party who examines a witness (a physician) as to matters privileged by the statute, cannot object if the same witness is called by his adversary upon a subsequent trial. By examining the witness as to matters which he was authorized by law to exclude, he waived his privilege. — *McKenney v. Grand Street, etc. Co.*, N. Y. Ct. App., Feb. 8, 1887; 10 N. E. Rep. 544.

250. WITNESS—Testimony—Expression of Opinion. ——It is error to allow a witness, against an objection, to express his opinion about the facts shown by the testimony, it not being a question of expert evidence.—*Meade v. Carolina Nat. Bank*, S. C. S. Car., Feb. 14, 1887; 1 S. E. Rep. 419.

QUERIES AND ANSWERS.*

[*Correspondents are requested to draw up their answers in the form in which we print them, and not in the form of letters to the editor. They are also admonished to make their answers as brief as may be.—Ed.*]

QUERIES.

Query No. 19.—A, a minor, gets B to go on his note as surety. When the note becomes due A is of age, at which time he requests B to pay off the note and he will repay him. Can B recover of A? Cite authorities.

S. & B.

Springfield, Mo.

Query No. 20.—A, a citizen of O, holds a joint and several note on B and C, citizens of O, and D, a citizen of Kan. All three make assignments to citizens of O. Will A's claim be barred as against D if he fails to file his claim with any of the assignees? What would be the effect as to D, by A filing his claim with the assignees of B and C.

A Subscriber.

Query No. 21. Section, 1962, Code Ga., provides: "There shall be no taking of mortgages in this State." Is this provision in conflict with the principle decided in the majority of the cases cited in the article of M. W. Hopkins, Vol. 23, No. 25, Cent. L. J.?

Carrollton, Ga. G. W. A.

QUERIES ANSWERED.

Query No. 7 [23 Cent. L. J. 70].—A executes a quitclaim deed to B, conveying a certain tract of land, the deed bearing date of December 21, 1884. B conveys the same land by quitclaim deed to C, this deed bearing date of December 23, 1884, but the certificate of acknowledgment bears date of December 16, 1884, seven days prior to the date of the deed itself. Did C derive any title from B, the deed being acknowledged prior to the date of the deed from A to B, *i. e.*, under the circumstances should the date of the deed or the date of the acknowledgment be presumed to be the date of delivery? Please cite authorities. X. Y. Z.

Answer.—The law presumes a deed was executed and delivered on the day it bears date, though that may differ from the date of the acknowledgment. 3 Wash. Real Prop. [5th ed.] 298. The deed only takes effect from its delivery, which is a matter for the jury under the evidence. *Idem*, 299, 312. A quitclaim deed only conveys the title the grantor has at its delivery, unless it contains covenants, which convey after-acquired title by way of estoppel. *Idem*, 113, 114.

So C's title depends upon when A's deed was in reality delivered to B, and the presumption arising from the date may be rebutted by parol evidence.

S. S. M.

RECENT PUBLICATIONS.

A TREATISE ON THE LAW OF STOCK AND STOCKHOLDERS, as applicable to Railroad, Banking, Insurance, Manufacturing, Commercial, Business, Turnpike, Bridge, Canal and other Private Corporation. By William W. Cook, of the New York Bar. New York: Baker Voorhis & Co., Law Publishers, 66 Nassau Street, 1887.

This is an able and elaborate work on a most important branch of Corporation Law. The general subject, as every one in the profession knows, has grown to be the most extensive and important part of the law, as now administered in our courts, State and federal, involving greater interests and affecting a larger number of persons than any other. The particular branch of that subject, which Mr. Cook has treated, has heretofore received less attention than its importance demanded, but in this work he has fully remedied the deficiency, and supplied the profession with a text-book that leaves nothing to be desired. The arrangement of the work has evidently received very full and careful consideration by the author, and in this respect he has succeeded, in an eminent degree, in placing his matter before the reader so systematically that one can readily find any desired point of the law of the subject, without danger of mistake, delay or consequent vexation. The importance of a clear logical systematic arrangement of the matter of a treatise can hardly be overestimated. It is not sufficient, by any means, that a book shall have the root of the matter in it; if it is presented in a confused, disorderly, and immethodical fashion, it is of little value to any reader, least of all to the busy practitioner who has neither time nor, we may add, patience to grope through chaos to find a point of law.

Although this merit is important, it is nevertheless subordinate to the substantial excellences of the work. The author has done his work thoroughly and conscientiously; he has examined and cited no less than six thousand cases, has exhausted the subject, and avoiding all long discussions and quotations, has omitted nothing, which, to borrow a phrase from the clergy, would "tend to edification."

The importance of the subject, and, consequently, of the book, to the profession is obvious. The business of the world has in a great measure run into aggregation of capital and enterprise, or in other words, is done chiefly by corporations; and the subject of this book, lying as it does at the very root of the law of corporations, also permeates every fibre of it; and although the general subject of corporation law, and some of its subdivisions, have been treated by many writers, this important branch of it has never before received adequate consideration. Especially is that the case with reference to fictitious stock, and the transfer of stock *inter vivos*, and by will and distribution. To these points the author has given special attention. In fully commending the book to the favorable consideration of the profession, we need hardly add that the publishers have, according to their custom, done well their share, and presented the result of Mr. Cook's labors in a large, handsome, well-printed and well bound-volume.

THE AMERICAN REPORTS, containing all Decisions of General Interest decided in the Courts of Last Resort of the sevesal States, with notes and references, by Irving Browne. Vol. LVI, containing all cases of general authority in the following reports: 78 Alabama; 66 California; 67 California; 115 Illinois; 116 Illinois; 67 Iowa; 68 Iowa; 82 Kentucky; 142 Massachusetts; 56 Michigan; 63 Mississidpi; 86 Missouri; 87 Missouri; 19 Nebraska; 63 New Hampshire; 41 New Jersey Equty; 108 Pennsylvania State; 111 Pennsylvania State; 112 Pennsylvania State; 58 Vermont; 80 Virginia; 65 Wisconsin. Albany: John D. Parsons, Jr., Publisher. 1887.

We have so often and so recently noticed the predecessors of this volume that really nothing remains to say in commendation of this standard snd sterling series of reports, which would not be a twice-told tale. It is not good taste, certainly, for any writer to quote from himself, but as in our notice of vol. LV (*ante*, p. 216), we expressed our views of that volume, we trust we may be pardoned for repeating our remarks and applying them to the volume before us We there said: "The truth is, the character of this standard collection of select cases is so firmly established and its merits so fully appreciated by the profession, that commendation is as superfluous as disparagement would be innocuous. We can only add that in this volume the learned reporter continues to append to the more important cases the annotations which have heretofore added so much to the value of the collection."

JETSAM AND FLOTSAM.

THE late Mr. D had a dry, hard sense of humor that at times thoroughly disconcerted those upon whom he practiced it. At one time he was engaged in litigation over the title to certain real estate. His counsel was a prominent attorney in S——, whose financial status was not the best. The suit dragged on for years, Mr. D remitting the costs promptly at stated intervals. One day the attorney, finding himself hard pressed for money, wrote to Mr. D for a remittance, at the close of his letter placing this Scriptural quotation: "Muzzle not the ox that treadeth out the corn." In a few days he received for answer a check and his original letter, on which Mr. D had simply written: "Muzzle, h——l! You eat more than you tread out."

JUSTICE IN THE RANGES.—Wayback Justice—You are found guilty of disturbin' the peace; you're from the east, ain't yer?

Dissipated Stranger (from Omaha)—No; sir; I'm from Howlerville.

"Ye air?"

"Yes."

"Well, y'r fine will be $15."

"Won't pay it."

"Say $10, then."

"Never."

"Well, ye might pay $5 fer carryin' concealed weapons, anyhow. It's agin the law, ye know."

"I haven't any weapons, not a sign of one; so I suppose you'll remit the fine altogether, won't you?"

"No pistols?"

"No."

"No knife, nor nothin'?"

"Not a thing."

"Then I fine you $150, and may heaven have mercy on y'r soul if you don't pay it."